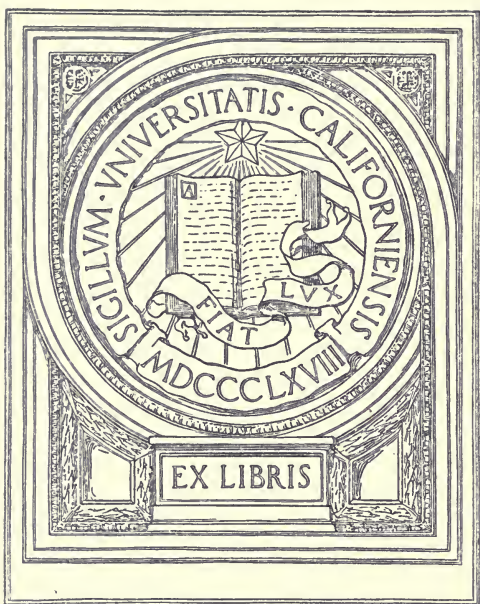






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THE CIVIL CODE

OF THE

REPUBLIC OF PANAMA

And Amendatory Laws

*Continued in Force in the Canal Zone,
Isthmus of Panama, by
Executive Order of
May 9, 1904*

*Panama (Republic) Laws,
" statutes, etc.*

Translated under the direction of
CHARLES E. MAGOON,
General Counsel, Isthmian Canal Commission,
By FRANK L. JOANNINI.

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DECREE No. 4 OF 1903.

(Of November 4.)

ON THE PROVISIONAL ORGANIZATION OF THE REPUBLIC.

The Junta of the Provisional Government of the Republic of Panama

Decrees:

First and last article.—There shall be in force in the Republic of Panama the laws which have been in force up to the present, with the modifications and alterations required by the political change effected, and with those which the Junta may direct in subsequent decrees.

Let it be published.

Given in Panama, November 4, 1903.

J. A. ARANGO.
FEDERICO BOYD.
TOMAS ARIAS.



HISTORICAL INTRODUCTION.

The history of the Colombian law may be divided into four periods.

The first period covers the colonial period, that is to say, the time when the present Republic of Colombia formed part of Spain.

With regard to this period, we will confine ourselves to an indication of the most important general laws, without touching on such laws as the Code of Tolosa, that of Alaric, the Fuero Juzgo, the Setenario, the Espéculo, the Fuero Real, the Ordenanzas de las Taruferías, the laws of the Estilo, those of the Fuero of Sepúlveda, those of the Ordenamiento of Alcalá, those of Toro and the Fueros (special provisions for provinces, municipalities, and even for certain classes of persons). Among the Spanish laws of a general character of greater importance are included, the Seven Partidas, the Nueva Recopilación, the Novísima Recopilación and the Recopilación de Indias, which were the Codes specially applicable in the Colony, and were continued thereafter for some years.

The Seven Partidas comprise the most complete collection of laws of their time, in the opinion of distinguished jurists. It has been impossible to ascertain who their author was, but there is no reason to deny that they may have been the work of Alfonso X, King of Castille and of Leon, called the Wise. Originally they were known as the Libro de las Leyes or Fuero de las leyes. They were first called Partidas in the beginning of the fourteenth century by reason of being divided into seven parts. They were begun on June 23, 1256, and concluded apparently in 1263 or 1265, in Seville. They were not given any legal force until 1348, during the reign of Alfonso XI, when some changes were made therein. The first rule governing legal precedence was then established, viz: 1. The laws of the Ordenamiento; 2. The Fuero Real and the municipal Fueros; and 3. The Laws of the Partidas.

The Nueva Recopilación was published in 1567 during the reign of Philip II. It was begun by Don Pedro Lopez de Alcocer and continued by Doctors Guevara, Escudero and Arrieta, the last named concluding it, and was revised by Licentiate Atienza.

The Novísima Recopilación, the plan of which was due to Don Juan de la Reguera Valdelomar, was concluded in 1804 and printed in 1805, during the reign of Carlos IV. It consists of twelve books.

The Recopilación de Indias, while earlier than the Novísima Recopilación is mentioned after the latter, because it was specially destined to America.

The first to order a recopilation of the laws and royal provisions which had been issued for the good government of the Indies, was Philip II, in 1570; but it was not carried out until 1680, under the reign of Carlos

II, who put it in force. The full title is *Recopilación de leyes de los Reinos de las Indias*. It consists of nine books.

The second period comprises the first period of the central Republic.

The Spanish law was tacitly reformed in so far as it was opposed to the equality of all citizens in the eyes of the law, which was the essential basis of the new institutions, and in so far as it conflicted with the principles which the latter comprised at the time independence was proclaimed from the mother country, on July 20, 1810.

The Spanish legislation was subsequently expressly amended by means of laws.

The Constitution of 1821 says in its article 188: "All laws heretofore in force on matters and points which are neither directly nor indirectly opposed to this Constitution nor to the decrees and laws which Congress may enact, are declared in force and effect."

The law of civil procedure of May 13, 1825, states, article 1: "The order in which the laws are to be observed in all the Tribunals and Courts of the Republic, civil, ecclesiastical and military, in civil as well as criminal matters, is the following: 1. Those decreed or which may hereafter be decreed by the Legislative Power; 2. The pragmatics, cédulas, orders, decrees and ordinances of the Spanish Government sanctioned to March 18, 1808, which were observed under the same government in the territory which the Republic comprises; 3. The Laws of the *Recopilación de Indias*; 4. Those of the *Nueva Recopilación* of Castilla; and 5. Those of the *Siete Partidas*."

It is to be noted that neither the article cited nor the laws of May 14, 1834; June 29, 1858, "organizing the Judiciary of the Confederation"; of May 16, 1865 (Law 42) and of June 7, 1872 (Law 57b), which established the legal precedence, preserving the order of the law of May 13, 1825, with respect to the Spanish laws, included the *Novísima Recopilación* among those which were to be declared in force in the country. Nevertheless, the *Novísima Recopilación* was in force, as it had been enacted before March 18, 1808, and as the Spanish laws enacted before that time were declared in force in the Republic as we have seen.

During this second period, two collections of laws were formed, called "*Recopilación Granadina*" and "Appendix to the *Recopilación Granadina*."

The Recopilación Granadina.—By a law of May 14, 1843, it was provided that the Executive Power should prepare and publish a recopilation of the laws and decrees mentioned in the law, which should be considered, therefore, as the only ones in force up to that date of those enacted by the Republic.

As the provisions of said law had not been complied with until 1844, on June 12 of said year an amendment was added to include in the recopilation the laws of 1844, and to exclude some others which had been mentioned in the original law.

Hence it is that the laws enacted by the Congress of the Republic from 1821 to 1844 inclusive, compose the work entitled: "Recopilación de las Leyes de la Nueva Granada," known commonly and even officially under the name of Granadian Recopilation. This work was compiled and published in 1845 by Don Lino de Pombo by virtue of a commission from the Executive Power. It comprises only the legal provisions in force in 1844.

This Recopilation is divided into seven treaties, subdivided into parts, and the latter into laws. It is preceded by some "Preliminaries" which contain the fundamental constitutional law of 1834, the Constitution of 1843, the law for the publication and execution of the latter, and the two laws providing for the work.

Appendix to the Granadian Recopilation.—The laws of 1845 to 1850, inclusive, are collected in a work entitled "Apéndice á la Recopilación de las leyes de la Nueva Granada," known under the name of Appendix to the Granadian Recopilation. Said work was ordered, compiled and published in 1850, by Don José A. de Plaza, under direction of the National Executive Power. The laws of 1845 to 1849, inclusive, are subdivided in the same manner as in the Granadian Recopilation, that is, into seven treaties, subdivided into parts, which comprise the laws on each subject. The laws enacted during 1850, appear in the last part of the Appendix, in the order in which they were enacted.

During the second period of Colombian law, many provisions were enacted which had for purpose the harmonizing of the form of government with the civil law. By the Constitution of 1821, "mayorazgos" and "vinculaciones," had been prohibited. So that since that time it was established that no property could be inalienable. This was followed by laws on marriage, which preserved the religious marriage until 1853, when for the first time civil marriage was established and divorce was permitted as a dissolution of the matrimonial bonds. In 1856, divorce was abolished and has never again prevailed in the Republic, excepting as a separation of the spouses, and religious marriage was again permitted without excluding civil marriage, with the changes which we will indicate below. Laws also followed regarding the granting of letters patent for inventions, publication of literary works and establishment of industries; the discovery of treasure, succession of foreigners, rent charges and pious foundations; interest which was declared subject to agreement in 1835; notaries and registration of property, etc.

The third period comprises the Federation. Although the Federation was not established constitutionally until 1858, as the Constitution of 1853 opened the doors to the federal system, since it recognized municipal autonomy and detailed the matters which would come under the exclusive jurisdiction of the General Government, the creation of sovereign Federal States was commenced in 1855. The first one to be created

was Panama. Then followed Antioquia in 1856, and Santander, Bolívar, Boyacá, Cauca, Cundinamarca and Magdalena in 1857. General Mosquera, the leader of the revolution in 1860, created in that year the sovereign State of Tolima, composed of some provinces of the State of Cundinamarca.

The nine States mentioned acquired at the time of their creation, the power to legislate in matters of public, domestic and private law, that is, in constitutional, administrative and penal matters; in civil, commercial and matters of procedure; but with the obligation of respecting the individual or social guaranties recognized in the national Constitution, and also matters under the exclusive jurisdiction of the Nation, such as foreign commerce, coasting trade, the coining of money, the legislation and procedure in cases of prizes, reprisals, piracy and other crimes, and in general regarding acts occurring on the high seas, and the civil and penal legislation in cases of violation of International Law. The Federal Government enjoyed the exclusive representation of the Republic abroad, and as it directly administered certain Territories, it had its private and public law for application thereto particularly.

Hence it is that during the Federation there were in the country ten distinct bodies of laws; those of the nine States, and that of the General Government.

Speaking specially of the Civil Law, it is to be noted that first the States, and then the Republic, accepted with some modifications the Civil Code of Chile, the work principally, of Don Andrés Bello, and which is based not only on the French Civil Code, but also on other bodies of laws, such as the old Spanish law.

The State of Cundinamarca adopted the Chilian Code in 1859; in the same year it was also adopted by the State of Cauca; in 1860, by Panamá; the State of Boyacá, adopted the Code of Cundinamarca in 1864. Finally all the other States replaced the old Spanish laws by the Code of Chile, with the modifications they thought proper, which, as a general rule, were insignificant.

The Republic was the last to adopt this Code, as it was not until 1873 that it took the place of the Spanish laws in civil matters under the jurisdiction of the General Government. When adopted, one of the principal amendments was the establishment of civil marriage as the only one legally recognized.

Fourth Period.—The fourth period comprises the present centralized form of government, which was a consequence of the war of 1885, causing the extinction of the former sovereign States with their Constitutions and Laws. Thus, after many years, the Nation adopted a centralized form of government similar to that which existed from 1821 to 1853, and the ten bodies of laws were reduced to one.

Before the enactment of the Civil Code which was to be in force in the

Republic, the laws of the State were continued in force and some rules thereon were enacted.

The Constitution of August 4, 1886, provided (art. 11) that foreigners should enjoy in Colombia the same rights as were granted to Colombians by the laws of the Nation of the foreigner, unless otherwise provided in public treaties. This principle of reciprocity replaced the former principle which made no difference between the native and the foreigner with regard to the acquisition and enjoyment of civil rights.

Article 52 of the same Constitution incorporated in the Civil Code, as a preliminary title, the provisions of Title III of said Constitution, on civil rights and social guaranties.

Finally, the Civil Code has been amended by a number of laws by the Legislative Power of Colombia, which are included in this translation.

On November 4, 1903, the Department of Panamá declared its independence from the Republic of Colombia.

A "Junta" of the Provisional Government of the Republic was established, composed of three members, who had full administrative and legislative powers, until the adoption of a Constitution.

This Junta, by Decree No. 4, of November 4, 1903, provided "that the laws in force heretofore shall continue in force in the Republic of Panama, with such modifications and changes made necessary by the political change effected and which the Junta may prescribe in subsequent decrees."

By a decree of November 21, 1903, two commissions of lawyers were appointed, under the chairmanship of the Minister of Justice, one for the purpose of drafting projects for a Civil and Judicial Code, and the other, for Commercial, Mining and Penal Codes. Although this decree provided that said Codes should be prepared by January 15, 1904, the magnitude of the work was such that it has not as yet been completed.



LIST OF WORKS CONSULTED IN TRANSLATING THE CIVIL CODE.

Estudio sobre el Derecho Civil Colombiano, by Fernando Vélez, Medellin, 1898.

Código Civil Nacional (de Colombia) concordado y leyes adicionales Concordadas y comentadas, por Manuel J. Angarita, Bogotá, 1888.

Code of Practice of Louisiana, with annotations of Henry L. Garland, Jr., Esq., Compiled and edited by Solomon Wolf, New Orleans, 1901.

Revised Civil Code of Louisiana, with annotations, etc., by Edwin T. Merrick, New Orleans, 1900.

Diccionario de la Administración española, por Don Marcelo Martinez Alcubilla, Madrid, 1892-1902.

Jurisprudencia Colombiana, extractada y concordada por el Relator de la Corte Suprema, por el Dr. Antonio José Uribe, Official edition, Bogotá, 1900.

Prontuario sobre asuntos administrativos y judiciales, por Bonifacio Vélez, Medellin, 1893.

Diccionario razonado de legislación y jurisprudencia, by Joaquín Escribiche, Paris and Mexico, 1888.

A Dictionary of Law, by Henry Campbell Black, M. A., St. Paul, Minn., 1891.

EXPLANATORY NOTE.

In the following translation of the Colombian Civil Code and the amendatory laws, the translator is specially indebted to the edition of the same annotated by Manuel J. Angarita, published in Bogotá, in 1888.

At the end of each article of the Code, with few exceptions, there have been inserted in parentheses the numbers of other articles which bear more or less relation to the one in question. When the articles to which reference is made are of a law other than that in which they appear, such law is stated. For example: Following article 370 of the Code appear these citations: 319, 367, 407. 21 of law 57 of 1887. 55 and 56 of law 153 of 1887. The first three figures indicate the respective articles of the Code, while the others indicate those of the laws mentioned, which are included in this translation immediately after the Code.

As footnotes have been inserted in some cases citations to identical or similar provisions of the Louisiana Civil Code, and attention has also been called to obvious errors in the official printed text, or differences from like provisions of the Code of Chile.

An effort has been made to secure as correct a translation as possible, and in some cases the translator may be accused of sacrificing what may be called good English for fidelity to the original text. He has been constantly on his guard against making an interpretation of law instead of a translation.

FRANK L. JOANNINI.

NATIONAL CIVIL CODE.

LAW 57, OF APRIL 15, 1887.

On the adoption of Codes and the unification of the national legislation.
(Arts. 1 to 4.)

THE NATIONAL LEGISLATIVE COUNCIL HEREBY DECREES:

ARTICLE 1. Ninety days after the publication of this law there shall govern in the Republic, with the additions and amendments referred to therein, the following Codes:

The Civil Code of the Nation, sanctioned May 26, 1873.

That of Commerce of the former State of Panama, sanctioned October 12, 1869; and the National Code on the same subject, edition of 1884, which relates solely to maritime commerce.*

325 of law 153 of 1887.

The Penal Code of the former State of Cundinamarca, sanctioned October 16, 1858.

The Judicial Code of the Nation sanctioned in 1872, and amended by law 76 of 1873, edition of 1874.

The Fiscal Code of the Nation and the laws and the decrees having the force of law, relative to the organization and administration of the national revenues; and

The Military National Code and the laws supplementary to and amendatory thereof.

ART. 2. The terms Territory, Prefect, Union, United States of Colombia, President of the State, employed in the Civil Code, shall be understood as applying to the new constitutional entities or officials, as the case may require.

324 of Law 153 of 1887.

ART. 3. In the Code of Commerce of Panama, Republic shall be understood in the place of the State of Panama, and the references made in said Code to the laws of said State, shall be understood as made to the corresponding provisions of the National Codes.

324 of Law 153 of 1887.

* There is no edition of the Code of Commerce of the Nation of the year 1884, but there is one of 1874.

ADDITIONS AND AMENDMENTS TO THE CIVIL CODE.

Preliminary Title.

ART. 4. In accordance with Art. 52 of the Constitution of the Republic, Title III (Arts. 19 to 52) of said Constitution is declared to be incorporated in the Civil Code.

Said Title III of the Constitution is as follows:

TITLE III.

Civil Rights and Social Guaranties.

ARTICLE 19. The authorities of the Republic are instituted for the protection of all persons residing in Colombia, in their lives, honor and property, and to insure mutual respect of natural rights by providing against and punishing crimes.

See Arts. 10 and 11 of the Const.

ART. 20. Private individuals are not liable to the authorities, except for a violation of the Constitution or of the laws. Public officials are also so liable for the same cause and for exceeding their powers, or for omission in the exercise of their functions.

21, 57, 63, 65, and 51 of Const.

ART. 21. In the event of a manifest violation of a constitutional precept to the detriment of some person, a superior mandate does not exempt the agent executing it from liability.

Soldiers in active service are exempted from this provision. With regard to them, the liability shall fall only upon the superior who gives the order.

20 and 168 of Const.

ART. 22. There shall be no slaves in Colombia.

He who, being a slave, shall set foot upon the territory of the Republic shall be free.

19 of Const.

ART. 23. No one shall be molested as to his person or family, nor imprisoned or confined, nor detained, nor his domicile searched, except

by virtue of a written order from a competent authority, with the legal formalities and for causes previously defined in the laws.

In no case can there be detention, imprisonment or arrest for debts or obligations of a purely civil character, excepting upon a judicial order to prevent removal from the jurisdiction of the court.

19, 21, 24, 25, 26, 27, 28, 39, and 107 of Const.

ART. 24. A delinquent seized *in flagranti*, may be arrested and taken before the judge by any person. If the agents of the authority should pursue him, and he should seek refuge in his own domicile, they may enter it for the purpose of effecting the arrest; and if he should seek refuge in another's dwelling, a request must first be made to the owner or tenant thereof.

23 of Const.

ART. 25. No one can be forced in a criminal, correctional or police matter, to testify against himself or against his relatives within the fourth civil degree of consanguinity or second of affinity.

19 and 23 of Const.

ART. 26. No one can be tried except in accordance with the laws in existence prior to the commission of the act charged, before a court of competent jurisdiction, and with the observance of all the formalities appertaining to each trial.

In criminal matters, the permissive or favorable law shall be applied in preference to the restrictive or unfavorable law, even though it be one subsequent to the commission of the act.

27, 28, and 31 of Const. 43-47 of Law 153 of 1887.

ART. 27. The preceding provision is not an obstacle to the punishment, without previous trial, in the cases and within the precise terms fixed by law:

1. By officials exercising jurisdiction or authority, who may impose fines or sentence to imprisonment any person insulting them or lacking in respect at the time they are discharging the functions of their office.

2. By Military Commanders, who may impose penalties *incontinenti* for the purpose of repressing insubordination or a military mutiny, or to maintain order when before the enemy.

3. By captains of vessels, who have, when not in port, the same power to repress crimes committed on board.

26 and 28 of Const.

ART. 28. Even in time of war no one can be punished *ex post facto*, except in accordance with the law, order or decree by which the act had been previously prohibited and the respective penalty determined.

This provision does not act as an obstacle to the arrest and detention, even in time of peace, by order of the Government and upon a report of the Ministers, when there are serious reasons to fear the disturbance of public order, of persons against whom there are grave indications that they are about to commit acts against the public peace.

26, 27, 29, 32, 33, and 34 of Const. 43 of law 153 of 1887.

ART. 29. The Legislator shall impose the capital penalty only to punish, in cases defined as more grave, the following crimes, when juridically proved: treason to the country in a foreign war, parricide, murder, arson, assault in gangs, piracy, and certain military crimes defined by the laws governing the army.

At no time can the capital penalty be applied with the exception of the cases provided for in this article.

28 and 30 of Const. 63 of law 57 of 1887. 216 to 231 of law 153 of 1887.

ART. 30. There shall be no penalty of death for political crimes. The law will define them.

ART. 31. Rights acquired under a just title in accordance with the civil laws by natural or juridical persons, cannot be ignored or impaired by subsequent laws.

When the application of a law enacted for reasons of public utility should result in a conflict of the rights of private individuals with the necessity recognized by said law, the private interest must cede to the public interest. But the expropriations which it may be necessary to make, require full indemnity in accordance with the following article:

26, 32 and 33 of Const. 17 to 49 of law 153 of 1887.

ART. 32. In time of peace, no one can be deprived of his property, either in whole or in part, except by virtue of a sentence or compulsory process, or indemnity, or general taxation, in accordance with the laws.

For serious reasons of public utility, defined by the Legislator, forcible alienation may take place by means of a judicial order, and indemnity shall be paid for the value of the property before the expropriation takes place.

31, 33, and 34 of the Const. 18, par. 2 of law 153 of 1887.

ART. 33. In the event of war, and only for the purpose of providing for the re-establishment of order, the necessity of an expropriation may

be decreed by authorities not of the judiciary and without necessity of prior indemnity.

In the said case, the immovable property can be occupied temporarily only, either to meet the requirements of the war or for the purpose of devoting its products thereto, as a pecuniary penalty imposed upon its owners, in accordance with law.

The Nation shall always be liable for the expropriations which the Government may effect either itself or through its agents.

28, 31, 32, and 34 of Const.

ART. 34. A penalty of confiscation cannot be imposed.

28, 31, 32, and 33 of Const.

ART. 35. Literary and artistic property shall be protected, as transferable property, for the lifetime of the author and for eighty years more, upon compliance with the formalities prescribed by law.

The same guaranty is offered to the owners of literary works published in Spanish speaking countries, provided that the respective Nation embody in its legislation the principle of reciprocity and without the necessity of celebrating international conventions for the purpose.

19. Law 32 of 1887.

ART. 36. Donations *inter vivos* or testamentary donations made in accordance with the laws, for the purposes of charity or public instruction cannot be deviated from their purpose or have it modified by the Legislator.

31 and 120, subdivision 21 of Const.

ART. 37. There shall not be in Colombia real property which cannot be freely alienated, nor unredeemable obligations.*

81 of law 153 of 1887.

ART. 38. The Roman Catholic Apostolic religion is that of the Nation; the public Powers shall protect it and shall enforce its respect as an essential element of social order.

It shall be understood that the Catholic Church is not nor shall it be official, and it shall preserve its independence.

39, 40, 41, 47, par. 3, 49, 14, 53, 54, 55, and 56 of Const.

* Law 2 of 1886 states: "First and last article. In Colombia real property is not transferable to foreign Governments."

ART. 39. No one shall be molested by reason of his religious opinions, nor compelled by the authorities to profess beliefs or observe practices contrary to his conscience.

19, 40 and 51.

ART. 40. The exercise of all forms of worship which are not contrary to Christian morals or to law is permitted.

Acts contrary to Christian morals or subversive of public order, performed on the occasion or under the pretext of the exercise of a cult, shall be subject to the common law.

19, 38, 39, and 51 of Const.

ART. 41. Public education shall be organized and directed in accordance with the Catholic religion.

Primary instruction supported by public funds, shall be gratuitous and not obligatory.

120, sec. 15, and 185 of Const.

ART. 42. The press is free in time of peace; but responsible in accordance with the laws, when it attacks the honor of persons, social order or public tranquility.

No newspaper publishing office can, without the permission of the Government, receive a subvention from other Governments or from foreign companies.

ART. 43. Correspondence entrusted to the telegraph or to the mails is inviolable. Private letters and papers cannot be intercepted nor examined, except by the authorities, upon an order from an official of competent jurisdiction, and in the cases and with the formalities established by law, and with the sole purpose in view of seeking judicial evidence.

The circulation of printed matter through the mails may be taxed, but never prohibited in time of peace.

19 and 51 of Const.

ART. 44. Every person may engage in any trade or honest occupation without the necessity of his belonging to the masters' or doctors' guild (*gremio de maestros ó doctores*).

The authorities shall supervise the industries and professions in what relates to public morality, safety and health.

The law may require certificates of qualification for the exercise of the medical professions and those affiliated thereto.

54 of Const.

ART. 45. Any person has a right to submit respectful petitions to the authorities, either for motives of general interest, or for motives of private interest, and to obtain a prompt decision.

ART. 46. Any part of the population may meet or congregate peacefully. The authorities may disperse any meeting developing into a noisy or tumultuous one, or which obstructs the public roads.

48, par. 2 of Const.

ART. 47. The formation of public or private companies or associations not contrary to morals or legal order, is permitted.

Popular political assemblies (*juntas*) of a permanent character, are prohibited.

Religious associations must present to the authorities the authorization issued by the respective ecclesiastical superior, in order that they may be under the protection of the laws.

14, 38, 49, and 53 of Const.

ART. 48. The Government only may introduce, manufacture and possess arms and munitions of war.

No one can, within a town, carry arms without the permission of the authorities. This permission cannot be extended to cases of attendance at public meetings, elections or the sessions of the Assemblies or public Corporations, whether as participants or spectators.

46 of Const.

ART. 49. Legal and public corporations have the right to be recognized as juridical persons, and by virtue thereof to execute civil acts and enjoy the guaranties assured by this Title, with the general limitations which the laws may establish, for reasons of public utility.

14, 38, 47, and 53 of Const. 24 to 27 of law 57 of 1887. 80 of law 153 of 1887.

ART. 50. The laws shall determine all that relates to the civil status of persons, and the consequent rights and duties.

11 to 27 of law 57 of 1887. 50 to 81 of law 153 of 1887.

ART. 51. The laws shall determine the liability to which public officials are subject who shall act in contravention of the rights guaranteed in this Title.

ART. 52. The provisions of this Title shall be incorporated in the Civil Code as a preliminary Title and cannot be modified or changed except by an act amending the Constitution.

7 of law 153 of 1887.



CIVIL CODE OF THE UNION.

The Congress of the United States of Colombia hereby decrees:

PRELIMINARY TITLE.*

CHAPTER I.

Object and Force of this Code.

ARTICLE 1. The Civil Code comprises the substantive legal provisions which specially determine the rights of private individuals, by reason of the status of persons, their property, obligations, contracts, and civil actions.

ART. 2. All the provisions of the character mentioned in the preceding article which are applicable in matters of the jurisdiction of the General Government in accordance with the Constitution, and in the ordinary civil matters of the inhabitants of the territories which the former administers, are embodied in this Civil Code of the Union.

ART. 3. This Code considered in its entirety and in each of the titles, chapters, and articles of which it is composed, forms the rule established by the Colombian Legislator, to which it is a duty of private individuals to conform in their civil matters, which is that which constitutes the law or the national civil law.

CHAPTER II.

Of the Law.

(NOTE.—The figures at the end of the articles refer to the respective articles of this Code, excepting when the law to which they belong is mentioned.)

ART. 4. *Law* is a declaration of the sovereign will expressed in the form prescribed in the national Constitution. The general character of the law is to command, prohibit, permit or punish.

81, 82 of the Const. 98, 101, 16, 123, 85, 103, 512, 1334, par. 2.

ART. 5. But it is not necessary that the law which commands, prohibits, or permits, contain or express in itself the penalty or punishment incurred by its violation. The Penal Code defines the crimes and affixes the penalties therefor.

* See preliminary part of law 153 of 1887.

ART. 6. *Legal sanction* is not only the penalty, but also the reward; it is the good or the evil derived as a consequence of the fulfillment of its mandates or the transgression of its prohibitions.

In civil matters, acts executed against an express prohibition of the law are null, unless otherwise provided in said law. This nullity, as well as the validity and stability of those which conform to the law, constitute sufficient penalties and rewards, apart from those stipulated in the contracts.

512, 614, 123, 124, 125, 827, 828 par. 2, 2370, par. 3, 15, 16, 1526, 1950.

ART. 7. The *constitutional sanction* which the Executive Power extends to the acts passed by Congress in order to raise them to the category of laws, is different from the *legal sanction* of which the preceding article treats.

81, 85 to 90 of Const.

ART. 8. Custom has in no case force against the law. Disuse cannot be pleaded for its non-observance, nor any practice, however inveterate and general it be.

13, law 153 of 1887. 1246 par. 2, 1256 par. 3, 1621 par. 2, 1879 par. 2, 1998 par. 2, 2002, 2009, 2012, 2044, 2045, 2054.

ART. 9. Ignorance of the law does not serve as an excuse.

ART. 10.* The order in which the National Codes are to be observed, when incompatibilities or contradictions occur between them, shall be the following:

1. In their respective specialties: The Administrative Code, the Fiscal Code, the Military Code, and that of "Fomento."
2. The substantive Codes, viz.: the Civil Code, the Code of Commerce, and the Penal Code.
3. The adjective Judicial Code.

49 of law 153 of 1887.

CHAPTER III.

Effects of the Law.

ART. 11. The law is obligatory and produces its effects from the day it designates, and in every case after its promulgation.

85, 86, par. 2, and 89 of the Const.

* This article has been expressly repealed by art. 45 of law 57 of 1887, and is substituted by art. 5 of said law.

ART. 12. The promulgation of the law shall be made by inserting it in the "Diario Oficial" and sending it in this form to the States and Territories.

In the capital of the Union it shall be understood to be promulgated from the day of the insertion of the law in the official periodical; in the States and Territories, three days in the capital and fifteen days in the districts or towns composing them, after the receipt of said periodical by the President or Governor of the State, or by the Prefect of the respective Territory, for which purpose these officials shall cause their Secretary to keep a special Register in which to enter the date of the receipt of each number of the "Diario Oficial," giving notice thereof by the next mail to the Department of the Interior and Foreign Affairs.

ART. 13. Laws have no retroactive effect. There is no other exception to this rule but that admitted by article 24 of the National Constitution* in the event that the subsequent law, in criminal matters, imposes a lesser penalty.†

ART. 14. Laws which confine themselves to declaring the meaning of other laws, shall be understood as incorporated in the latter; but they shall in no manner affect the effects of judgments which may have become final in the intermediate period.

ART. 15. Rights conferred by the laws may be renounced, provided they affect only the individual interest of the person renouncing them, and that the renunciation is not prohibited.

6, par. 2, 198, 424, 1522, 1526, 1673, 1773, 1867, par. 2, 1950.

ART. 16. Laws, the observance of which affects order and good customs, cannot be derogated by private agreements.

ART. 17. Judicial decisions have no binding force except in the causes in which they were rendered: Consequently, judges are prohibited from prescribing in matters of their jurisdiction the observance of their decisions as a general or regular provision of law.

25, 26, 401, 406, 765, par. 5.

ART. 18. The law is binding both for citizens and foreigners residing in Colombia.

10, 11, 12, and 13, par. 2 of Const. 1053, 1054.

ART. 19. Colombians resident or domiciled in a foreign country, shall continue subject to the provisions of this Code and other national laws regulating civil rights and obligations:

1. In what relates to the status of persons and their capacity to exe-

* This refers to the Constitution of Rionegro.

† This article has been expressly repealed by art. 49 of law 153 of 1887.

cute certain acts which are to be effective in any of the Territories administered by the General Government, or in matters of the jurisdiction of the Union.

2. In the obligations and rights arising out of family relations; but only with regard to their spouses and relatives in the cases indicated in the preceding paragraph.

ART. 20. Property situated in the Territories and that in the States, in the ownership of which the Nation has an interest or right, are subject to the provisions of this Code, even though the owners thereof be foreigners and reside outside of Colombia.

This provision shall be understood as without prejudice to the stipulations contained in contracts entered into in a valid manner in a foreign country.

But the effects of such contracts, in order to be executed in any Territory, or in cases affecting the rights and interests of the Nation, shall conform to this Code and other civil laws of the Union.

ART. 21. The form of public instruments is determined by the law of the country in which they may have been executed. Their authenticity shall be proved in accordance with the rules established in the Judicial Code of the Union.

This form refers to the external formalities, to the authenticity, to the fact of having been really executed and authorized by the persons and in the manner expressed in such instruments.

22, 1084, 1085, 1086. 337, 711, and 876 to 883 of the Judicial Code, edition of 1887.

ART. 22. In the cases in which the Codes or the laws of the Union require public instruments for proof to be introduced in and produce effect in matters of the jurisdiction of the Union, private instruments shall have no value, whatever be their force in the country in which they may have been executed.

ART. 23. The civil status acquired in accordance with the law in force at the date of its constitution, shall subsist, even though said law should later lose its force.

31 of the Const. in force. 20 and 24 of law 153 of 1887. 34 of law 30 of 1888.

ART. 24.* Acts or contracts validly executed under the protection of the law of any State, may be proved by the means which said law establishes for their justification; but the form in which the proof is to be adduced shall be made subordinate to the provisions of the Judicial Code of the Union, and the binding force of said acts and contracts, their

* Expressly repealed by art. 45 of law 57 of 1887.

validity and the preference of the rights which they confer in the cases of succession or bankruptcy proceedings in which the Union is interested, or those which occur in the Territories, shall be decided by the application of the substantive laws of the said Union.

CHAPTER IV.

*Interpretation of the Law.**

ART. 25. The interpretation made *with authority* for the purpose of fixing the meaning of an obscure law, in a general manner, pertains solely to the Legislator.

17.

ART. 26. Judges and public officials in the application of the laws to particular cases and in administrative matters, shall interpret them by *way of doctrine*, seeking their true meaning, as private individuals use their own judgment to accommodate general provisions of law to their acts and special interests.

The rules fixed in the following articles must serve for the interpretation *by way of doctrine*.

17.

ART. 27. When the meaning of the law is clear, its literal meaning shall not be ignored under the pretext of following its spirit.

But, for the interpretation of an *obscure* expression in the law, its intention or spirit may be observed, as clearly manifested in itself or by the trustworthy history of its establishment.

ART. 28. The words of the law shall be understood in their natural and obvious sense, according to the general use of the same words; but when the Legislator shall have defined them expressly for certain matters their legal significance shall be applied in such matters.

ART. 29. Technical words of any science or art shall be accepted in the sense given them by those engaged in said science or art; unless it shall be clear that they have been given a different meaning.

69.

ART. 30. The context of the law shall serve to illustrate the meaning of each of its parts, in order that there may be the proper connection and harmony between all of them.

Obscure passages in a law may be illustrated by other laws, especially if they relate to the same matter.

1618 to 1624.

* See the first part of law 153 of 1887, especially arts. 1 to 14, inclusive.

ART. 31. The favorable or unfavorable character of a provision shall not be taken into consideration to extend or restrict an interpretation. The scope to be given each law shall be determined by its true meaning, according to the preceding rules of interpretation.

44 and 45 of law 153 of 1887:

ART. 32. In cases in which the foregoing rules of interpretation cannot be applied, obscure or contradictory passages shall be interpreted so as to best conform to the general spirit of the legislation and natural equity.

1618 to 1624.

CHAPTER V.

Definition of Various Words of Frequent Use in the Laws.

ART. 33. The words *man*, *person*, *child*, *adult*, and other similar words which in their general sense are applied to individuals of the human species, without distinction as to sex, shall be understood to include both sexes in the provisions of the laws, unless from the nature of the provision or the context they are obviously limited to one only.

On the other hand, the words *woman*, *girl*, *widow* and other similar words, which designate the feminine sex, shall not be applied to another sex, unless the law expressly extends them to the same.

ART. 34. An *infant* or *child* is one who has not attained the age of seven years; *impubes*, a male under the age of fourteen years and a female under twelve; an *adult*, he who is no longer impubes; *of age*, he who has attained the age of twenty-one; and a *minor* or person under age, he who is under said age.

The expressions *of age*, employed in the laws, include minors who shall have obtained their qualification as to age, in all cases and things in which the laws shall not have excepted them expressly.

339, 525, 588, 1329.

ART. 35. *Relationship by consanguinity* is the relationship or connection existing between persons descendant from the same trunk or stock, or who are united by ties of blood.

37, 41, 47, 48, 50.

ART. 36. Relationship by consanguinity is *legitimate* or *illegitimate*.

38, 39.

ART. 37. The degrees of consanguinity between two persons are reck-

oned by the number of generations. Thus, the grandson stands in the second degree of consanguinity to the grandfather, and two first cousins stand in the fourth degree of consanguinity to each other.

41, 47, 49.

ART. 38. *Legitimate relationship by consanguinity* is that in which all the generations from which it results have been authorized by law; such as that existing between two first cousins, legitimate sons of two brothers, who were also legitimate sons of the common grandfather.

36.

ART. 39. *Illegitimate consanguinity* is that in which one or more of the generations from which it results have not been authorized by the law; such as that between two first cousins, the legitimate sons of two brothers, one of whom was the illegitimate son of the common grandfather.

36.

ART. 40. The legitimacy conferred upon the children by a subsequent marriage of the parents, produces the same civil effects as legitimacy at the time of birth. Hence, two first cousins, the legitimate sons of two brothers who were legitimized by the marriage of their parents, stand to each other in the fourth degree of transverse legitimate consanguinity.

245.

ART. 41. In relationship by consanguinity there are lines and degrees. By *line* is understood the series and order of persons descending from a common trunk or tree.

37, 42.

ART. 42. The line is divided into *direct* or *straight*, and into *collateral transverse* or *oblique*, and the direct is subdivided into *descending* and *ascending*.

A *straight* or *direct* line is that formed by persons descending from each other, or comprising only generating persons and generated persons.

41, 43, 44, 45.

ART. 43. When in the direct line the other members are counted downwards from the trunk, it is called descending, for example: father, son, grandson, great-grandson, great-great-grandson, etc.; and when it is counted upwards, it is called ascending, for example: son, father, grandfather, great-grandfather, great-great-grandfather, etc.

42.

ART. 44. A *collateral, transverse, or oblique* line, is that formed by persons who, although not proceeding from each other, do descend from a common stock, for example: brother and sister, children of the same father or mother; nephew and uncle, proceeding from the same trunk, the grandfather.

42.

ART. 45. By a *paternal line* is understood that which comprises relatives on the father's side; and by *maternal line* that which comprises the relatives on the mother's side.

35, 41, 42.

ART. 46. In the transverse line the degrees are counted by the number of generations from one of the relatives to the common root, and from the latter to the other relative. Hence, two brothers stand in the second degree; the uncle and nephew in the third, etc.

37.

ART. 47. *Legitimate affinity* is that subsisting between a person who is or has been married and the legitimate consanguineous relatives of his or her husband or wife. The line or degree of legitimate affinity of a person to a consanguineous relative of the husband or wife, is qualified by the line or degree of legitimate consanguinity of said husband or wife to said consanguineous relative. Hence, a male stands in the first degree of legitimate affinity in the direct line to the children borne by his wife by a previous marriage; and in the second degree of legitimate affinity, in the transverse line, to the legitimate brothers or sisters of his wife.

35, 37, 41, 42, 49.

ART. 48. *Illegitimate affinity* is that subsisting between one of the persons who have not contracted marriage and have had carnal knowledge of each other, and the legitimate or illegitimate consanguineous relatives of the other, or between one of the two persons who are, or have been, married and the illegitimate consanguineous relatives of the other.

ART. 49. In illegitimate affinity the lines and degrees are classified in the same manner as in legitimate affinity.

47.

ART. 50. *Civil parentage* is that resulting from adoption, by virtue of which the law considers that the adopter, his wife and the adopted, stand to each other, respectively, in the relations of father, of mother,

of son. This relationship does not extend beyond the respective persons.

ART. 51.* Legitimate children are called those conceived during the true or putative marriage of their parents, producing civil effects, and those legitimized by the marriage of the same, subsequently to the conception.

149, 213, 236, 239, 245, 246. 6 and 20 of law 57 of 1887. —52, par. 2 of law 153 of 1887.

ART. 52. *Illegitimate children are natural* or begotten in criminal and punishable intercourse, or simply illegitimate.

57. 6, par. 2, of law 57 of 1887. 52 par. 1 of law 153 of 1887.

Natural children are called those born out of wedlock of persons who could marry at the time of the conception, which children have secured acknowledgment by their father or mother, or by both, granted in a public instrument or a testament.

7 of law 57 of 1887. 54 to 58 and 66 of law 153 of 1887.

Children begotten in criminal and punishable intercourse are adulterine and incestuous.

An *adulterine* child is that conceived in adultery; that is, between two persons of which one at least was married at the time of conception with the other: unless such persons shall have contracted a putative marriage which produces legal effects in respect to them.

140, No. 7, 1846, par. 3.

An *incestuous* child for such effects is that conceived between two persons who cannot marry by reason of the natural or civil bonds of relationship, and by reason of which the marriage would be null.

58, 59, 149, 239, 319, 320, 330, 368. 8, 20, and 21 of law 57 of 1887. Par. 2 of this article is expressly repealed by art. 45 of law 57 of 1887, and substituted by Art. 7 of the same law.

ART. 53. The denominations of legitimate, illegitimate and natural given to children, are applied correlatively to their parents.

ART. 54. Brothers may be so on the part of the father and of the mother, and are then called *carnal brothers*; or only on the part of the father, and are then called *paternal brothers*; or only on the part of the mother, and are then called *maternal* or *uterine* brothers.

* This article has been expressly repealed by art. 45 of law 57 of 1887, and substituted by art. 6 of said law.

ART. 55. Natural brothers to each other are the natural sons of one and the same father or mother, and legitimate sons shall bear a similar relation to the natural sons of the same father or mother.

ART. 56. An illegitimate son, whether natural or a bastard, recognized by the father for the sole purpose of permitting him to claim support, is called *purely for support* (puramente alimentare); and with regard to the mother, the bastard who, not having with regard to her the legal quality of a natural child, is recognized by her for the same purpose.

ART. 57. The natural or bastard son is called *simply illegitimate* with regard to the father when he has not been recognized by him; and with regard to the mother, the bastard whom she has not recognized nor represented as a son in a public and notorious manner.

6, par. 2, 7, par. 2, 20, and 21 of law 57 of 1887. 66 of law 153 of 1887.

ART. 58. *Bastards* are called the offspring of criminal and punishable intercourse.

52, pars. 1 and 3.

ART. 59. Consanguinity, in respect to incestuous children, comprises the legitimate and the illegitimate.

36, 52, par. 5.

ART. 60. The relations of parentage referred to in the last part of Article 52, with regard to incestuous children, are those of the parents in the direct line of consanguinity, or in the first degree of the direct line of affinity, or in the second or third transverse degree of consanguinity.*

52, par. 5, 59. 8 of law 57 of 1887.

ART. 61. In the cases in which the law provides that the relatives be heard, it shall be understood that the following persons must be heard, in the order given:

1. The legitimate descendants.
2. The legitimate ascendants, in the absence of legitimate descendants.
3. The natural father and mother who have voluntarily recognized the son, or the latter, in the absence of legitimate descendants or ascendants.
4. The adopting father and mother, or the adopted child, in the absence of the relatives mentioned in numbers 1, 2, and 3.
5. The collateral legitimate relatives to the sixth degree, in the absence of the relatives mentioned in numbers 1, 2, 3, and 4.

* This article has been expressly repealed by art. 45 of law 57 of 1887, and substituted by art. 8 of law 57 of 1887.

6. The natural brothers, in the absence of the relatives mentioned in the preceding numbers.

7. The legitimate relatives by affinity within the second degree, in the absence of the consanguineous relatives above mentioned.

If the person be married, there shall also be heard, in any of the cases of this article, his or her spouse; and if one or more of the persons to be heard should not be of age or subject to the authority of another, the respective guardians shall be heard on his or their behalf, or the persons under whose power or dependency they may be constituted.

ART. 62. The *legal representatives* of a person are the father or husband under whose authority such person lives, his or her tutor or curator, while the legal representatives of juridical persons are those designated in article 639.

1637.

ART. 63. The law distinguishes three kinds of fault and negligence.

Grave fault, grave negligence, gross fault, is that which consists in not managing the affairs of others with that care which even careless persons or of little prudence usually employ in their own affairs. This fault in civil matters is equivalent to fraud (*dolo*).

Light fault, ordinary neglect, is the lack of that diligence and care which persons ordinarily employ in their own affairs. *Fault* or *neglect*, without any other qualification, signifies light fault or neglect. This character of fault is opposed to *ordinary* or *average diligence* or *care*.

He who must administer a business matter as *a good father of a family*, is liable for a fault of this character.

Very light fault or *neglect* is the lack of that careful diligence that a man of judgment employs in the administration of his important affairs. A fault of this character is opposed to *excessive diligence* or *care*.

Fraud (*dolo*) consists in the positive intention of inferring damage to the property of another or to his person.

1604, 298.

ART. 64. An unforeseen event, or one which it is impossible to resist, such as shipwreck, an earthquake, capture by the enemy, acts of authority exercised by a public official, etc., are called *force majeure* or *fortuitous events*.

1604, par. 2.

ART. 65. *Security* (*caucion*) signifies generally any obligation contracted for the security of another obligation of one's own or of another. Kinds of security are bonds, mortgages, and pledges.

ART. 66. A fact is said to be *presumed* when it is deduced from certain antecedents or known circumstances.

If these antecedents or circumstances which give rise to the presumption are determined by the law, the presumption is called *legal*.

Proof may be offered in evidence of the non-existence of the act legally presumed, even though the antecedents or circumstances from which the law infers it be true, unless the law itself expressly rejects such proof, in view of the antecedents or circumstances.

If a thing, according to the expression of the law, is presumed *de jure*, it shall be understood that evidence to the contrary is inadmissible, in view of the antecedents or circumstances.

1768, 92, par. 2 980.

ART. 67. It shall be understood that all terms of days, months, and years mentioned in the laws or in the decrees of the President of the Union, of superior or inferior courts, must be complete; and, furthermore, they shall run to midnight of the last day of the term.

The first and last day of a term of months or years must have one and the same number in the respective months. The term of one month may be consequently of 28, 29, 30, or 31 days, and the term of one year of 365 or 366 days, as the case may be.

If the month in which a period of months or years is to commence should have more days than the month during which the term is to terminate, and if the term should run from any of the days in which the first of said months exceeds the second, the last day of the term shall be the last day of said second month.

These rules shall be applied to prescriptions, qualifications of age, and in general to any period of time or terms prescribed in the laws or in the acts of the national authorities, excepting when such laws or acts shall otherwise expressly provide.

68, 70, 1551, 1555, 1138.

ART. 68. When it is stated that an act shall be performed *in* or *within* a certain *term*, it shall be understood that it is valid if performed before midnight concluding the last day of the term; and when it is required that a certain period of time elapse in order that certain rights take effect or expire, it shall be understood that these rights do not begin to take effect or expire until after midnight terminating the last day of said space of time.

67 and articles cited.

ART. 69. Measures of extension, weight, weights and money, which may be mentioned in the laws, in the decrees of the Executive Power and in the decisions of the Supreme Court and of the national courts, shall

always be understood in accordance with the definitions of the Administrative Code and the Fiscal Code of the Union.

29.

Art. 70. In the periods of time which may be fixed in the laws or in the decrees of the Executive Power, or of the superior or inferior courts, holidays shall be included; unless the term fixed should be of working days, and so expressed, as in such case, and when the Judicial Code does not provide otherwise, holidays shall not be counted.

67, 68, 1551, 1555, 1138.

CHAPTER 6.

Repeal of Laws.

ART. 71. The repeal of laws may be express or implied.

It is *express*, when the new law expressly states that it repeals the old one.

It is *implied*, when the new law contains provisions which cannot be conciliated with those of the former law.

The repeal of a law may be total or partial.

ART. 72. An implied repeal leaves in force in the former law, all that which is not in conflict with the provisions of the new law, even though relating to the same matter.

14 of law 153 of 1887.

BOOK FIRST.

OF PERSONS.

TITLE I.

Persons with Regard to Their Nationality and Domicile.

CHAPTER I.

Division of Persons.

ART. 73. Persons are *natural* or *juristic*.

Juristic personality and the special rules relating thereto are treated of in the final Title of this Book.

14, 38, 47, 49, and 53 of Const. 633 *et seq.* of said Title. 24 to 27 of law 57 of 1887. 80, 81 of law 53 of 1887.

ART. 74. *Persons* are all members of the human species, whatever be their age, sex, race or condition.

ART. 75. Persons are divided furthermore into domiciled and transient.

8 to 12 of Const.

CHAPTER 2.

Of Domicile in so far as it depends on the Residence and the Intention to remain therein.

ART. 76. Domicile consists in residence accompanied by the intention, real or presumptive, of always remaining therein.

66, 78, 79, 80, 82, 83, 84, 86.

ART. 77. *Civil* domicile relates to a determined part of a place of the Union or of a Territory.

78, 79, 81, 83, 84, 85.

ART. 78. The place where a person has his abode, or where he customarily exercises his profession or trade, determines his *civil domicile* or *residence*.

77, 81, 82, 83, 84, 85.

ART. 79. The intention of remaining permanently is not presumed, nor is civil domicile consequently acquired in a place, by the mere fact of a person occupying for some time his own or another's house therein, if he shall have his domestic home elsewhere, or if it shall appear from other circumstances that the residence is casual, such as that of a traveler, or that of a person engaged upon a temporary mission, or that of one engaged in an ambulatory traffic.

76, 78, 80, 82.

ART. 80. On the other hand, it is at once presumed that there is an intention of remaining permanently and taking up a residence in a place, if a store, pharmacy, factory, shop, inn, school or other durable establishment is opened therein, to be managed in person; also by the act of accepting in said place a fixed employment such as is generally granted for a lengthy period of time; and by other similar circumstances.

66, 82, 84.

ART. 81. Civil domicile is not changed by the act of the individual residing elsewhere for a long time, whether voluntarily or against his will, provided he keeps his family and his principal place of business, in the former domicile.

Hence, if confined by a judicial decree to a specific place, or banished in the same manner from national territory, he shall retain the former domicile, as long as he shall keep his family and his principal place of business there.

76, 77, 79, 80.

ART. 82. The domicile is also presumed from the declaration made to the respective Prefect or Corregidor, of the intention of taking up a residence in a certain district.

66, 76, 80.

ART. 83. When there shall occur, with respect to one and the same person, circumstances in various territorial sections which constitute civil domicile, it shall be understood that he has it in all; but if things are in question which show a special relation to one of said sections exclusively, that section alone shall be in such cases the civil domicile of the person.

66, 77, 84, 85, 1645, 1646, 1647.

ART. 84. Mere residence shall serve in the stead of civil domicile with regard to persons who have no civil domicile elsewhere.

76, 77, 78.

ART. 85. A special domicile may be established in a contract, by common agreement, for such judicial or extra-judicial acts which may arise under such contract.

76, 77, 78, 83, 1645, 1646, 1647.

ART. 86. The domicile of establishments, corporations and associations recognized by the law, is the place where their managing or directing office is situated, unless their by-laws or special laws should provide otherwise.

76, 78.

CHAPTER 3.

Of Domicile in so far as it Depends on the Condition or Civil Status of a Person.

ART. 87. A married woman follows the domicile of the husband.

ART. 88. He who lives under paternal power follows the paternal domicile, and he who is under guardianship, that of his tutor or curator.

ART. 89. The domicile of a person shall also be that of his servants and employees who reside in the same house with him; without prejudice to the provisions of the two preceding articles.

TITLE II.

Of the Beginning and End of the Existence of Persons.

CHAPTER I.

Of the Beginning of the Existence of Persons.

ART. 90. The legal existence of every person begins at birth, that is to say, when completely separated from the mother.

A child dying in the maternal womb, or who dies before being completely separated from his mother, or who should not have survived the separation even a moment, shall be considered as never having existed.

ART. 91. The law protects the life of him who is about to be born. A judge, consequently, shall, at the request of any person or *ex proprio motu*, take such measures as he may deem advisable to protect the existence of the unborn, whenever he shall believe that it is endangered in some manner.

93.

ART. 92. The period of the conception is deduced from the time of the birth, according to the following rule:

It is presumed *de jure* that the conception has preceded the birth by not less than one hundred and eighty days, and not more than three hundred, counted backwards, from midnight on the day the birth began.

66 par. 4, 237 par. 2, 214.

ART. 93. The rights which would be deferred to a child in the maternal womb, if it should be born and live, shall be suspended until the birth has taken place. And if the birth constitutes a beginning of existence, the newborn shall enter upon the enjoyment of said rights, as if he had existed at the time they were deferred. In the case of the second paragraph of article 90, these rights shall pass to other persons, as if the child had never existed.

CHAPTER 2.

Of the End of the Existence of Persons.

ART. 94.* A person terminates by natural death.

ART. 95. If by reason of two or more persons having lost their lives at

* This article has been expressly repealed by art. 45 of law 57 of 1887, and substituted by art. 9 of law 57 of 1887.

the same occurrence, as in a shipwreck, fire, earthquake (*ruina*), or battle, or by any other manner whatsoever, it should not be possible to ascertain the order in which their deaths occurred, action shall be taken in every case as if said persons had died at the same instant and none of them survived the others.

1015.

CHAPTER 3.

Of the Presumption of Death by Disappearance.

ART. 96. When a person disappears from the place of his domicile, his whereabouts being unknown, the disappearance shall be considered a mere absence, and his interests shall be represented and cared for by his agents or legal representatives.

ART. 97. If two years shall elapse without news of the absentee having been received, he shall be considered to have died, if the following conditions be also compiled with:

1. The presumption of death must be declared by the judge of the last domicile which the person who has disappeared may have had in the territory of the Nation, proof being first produced that the whereabouts of such person is unknown, that all means possible have been taken to ascertain it, and that since the date of the last news of his existence at least two years have elapsed.

2. The declaration referred to in the preceding article cannot be made until the absentee shall have first been cited by means of edicts published in the official periodical of the Nation, three times at least, more than four months being required to elapse between each two citations.

3. The declaration may be requested by any person having an interest therein; but it cannot be made until at least four months have elapsed since the last citation.

4. The counsel which shall be appointed for the absentee from the time the declaration is moved shall be heard in order to make such declaration, and also in all subsequent judicial proceedings; and the judge, on motion of the counsel or of any person having an interest therein, or *ex proprio motu*, may require in addition to the proofs presented of the disappearance, if he shall not consider them satisfactory, such others as the circumstances may require.

561, 564

5. All decisions, final as well as interlocutory, shall be published in the official periodical.

6. The judge shall fix as the presumed day of the death the last of the first biennial, reckoned from the date of the last news; and upon the

expiration of two more years from said date, shall grant the provisional possession of the property of the absentee.

7. Nevertheless, if after a person shall have received in war a grave injury, or the vessel upon which he may have been sailing was shipwrecked, or he shall have suffered any similar danger, nothing more should have been heard of him, and four years shall have elapsed since the event and the evidence and citations prescribed in the preceding numbers have been presented and made, the judge shall fix as the presumed day of death, that of the battle, wreck, or danger, or if said day be not known, he shall take the average between the beginning and the end of the period when the event could have occurred; and he shall immediately grant absolute possession of the property of the person who disappeared.

ART. 98. The judge shall grant the absolute possession instead of provisional possession, if after the expiration of two years from the presumed day of death, it be shown that sixty years have elapsed since the date of the birth of the absentee. He may also grant such possession upon the expiration of fifteen years from the date of the last news, whatever the age of the disappeared person would have been, had he lived.

97, No. 6, 105.

ART. 99. By virtue of the decree of provisional possession, the conjugal partnership shall be dissolved, if there be any, with the disappeared person; if the absentee shall have left any will it shall be opened and published, and provisional possession shall be granted to the presumptive heirs.

If heirs should not appear, the proceedings shall be conducted in accordance with the provisions for such cases contained in Book 3, Title 7, *Of the Opening of the Succession*.

97, No. 6, 152, 1820, No. 2, 1012.

ART. 100. By presumptive heirs of the disappeared person are understood those who were testamentary or legitimate heirs at the date of the presumed death.

The patrimony to which they are presumed to succeed, shall comprise the property, rights, and actions of the disappeared person, as they existed at the time of his presumed death.

ART. 101. The provisional possessors shall before all prepare a formal inventory of the property, or shall revise and correct any existing inventory with the same formalities.

468, 471, *et seq.*, 575, 102, 103, 104.

ART. 102. The provisional possessors shall represent the succession in judicial proceedings and defense against third persons.

101, 578, 579.

ART. 103. The provisional possessors may at once sell a part of the movables, or all of them, if the judge should deem it advisable, after having heard counsel for the absentees.

The real property of the disappeared person cannot be alienated or mortgaged before the absolute possession, except for a necessary cause or one of evident utility, so declared by the judge after an investigation and a hearing of counsel for the absentee.

The sale of any part of the property of the disappeared person shall be effected at public auction.

101, 575, 576, 577, 484.

ART. 104. Each of the provisional possessors shall furnish bond of preservation and restitution, and shall retain the respective fruits and interests.

ART. 105. If upon the expiration of four years after the decree of provisional possession, the disappeared person should not have appeared, or no news should have been received giving rise to the distribution of his property according to the general rules, the absolute possession shall be decreed, and the bonds shall be cancelled.

By virtue of the absolute possession, the restitutions imposed by article 109 cease.*

If there should not have been any provisional possession, the succession of the disappeared person shall be opened by the decree of absolute possession, according to the general rules.

97 No. 6, 98, 99, 104, 1012.

ART. 106. The absolute possession having been decreed, the owners and the *cestui que trusts* of property in usufruct or held fiduciarily by the disappeared person, the legatees, and in general all those who have rights subordinate to the condition of death of the disappeared person, may enforce the same as in the case of real death.

98, 105, 107, 314, No. 4.

ART. 107. He who claims a right for the existence of which it is to be supposed that the disappeared person died on the date of the presumed death, shall not be obliged to prove that the disappeared person really

* The second paragraph of this article has been expressly repealed by art. 45 of law 57 of 1887, and replaced by art. 10 of law 57 of 1887.

did die on said date; and until proof to the contrary is presented, he may make use of his rights according to the provisions of the preceding articles.

And, on the contrary, he who claims a right for the existence of which it is necessary that the absentee shall have died before or after said date, is obliged to prove it; and without such proof he cannot prevent that the right claimed pass to others, nor have any remedy against them.

66, par. 3, 106.

ART. 108. The decree of absolute possession may be revoked in favor of the disappeared person if he should reappear, or of his forced heirs found during his disappearance, or of his spouse, by marriage contracted during the said period.

579, 109, pars. 1 and 2.

ART. 109. In the rescission of the decree of absolute possession, the following rules shall be observed:

1. The disappeared person may request the rescission at any time he appears, or makes his existence known.

108.

2. Other persons cannot request it except within the respective periods of prescription counted from the date of the real death.

108.

3. This benefit may be taken advantage of only by persons who obtain it by a judicial decision.

4. By virtue of this benefit the property shall be recovered in the condition in which it may be, all alienations, mortgages and other real rights legally constituted therein subsisting.

5. In every restitution the defendants shall be considered as *bona fide* possessors, unless there be proof to the contrary.

6. The fact of having known and concealed the true death of the disappeared person, or his existence, constitutes bad faith.

769.

TITLE III.

Of Espousals.

ART. 110. *Espousals* or *betrothals*, that is to say, a promise of marriage mutually accepted, is a private act which the laws subject entirely to the honor and conscience of the individual, and which does not produce any obligation whatsoever in the civil law.

This promise cannot be pleaded either to demand that the marriage be carried out nor for the recovery of damages.

ART. 111. Nor can the fine which may have been stipulated by one of the betrothed in favor of the other in the event of the promise not being fulfilled be demanded.

But if the fine shall have been paid, its return cannot be demanded.

1527, par. 3, 2314.

ART. 112. What has been stated is without prejudice to the return of the things donated and delivered under the condition of a marriage which has not taken place.

150, 1844, 1845, 1846.

TITLE IV.

Of Marriage.

ART. 113. A marriage is a formal contract by which a man and a woman unite themselves for the purpose of living together, of procreating and mutually assisting each other.

12 and 19 of law 57 of 1887. 21 and 50 of law 153 of 1887.

ART. 114.* This contract may be celebrated by a legally constituted proxy.

ART. 115. A marriage contract is constituted and perfected by the free and mutual consent of the contracting parties, expressed before the proper official, in the form and with the formalities and requisites established in this Code, and shall not produce any civil or political effects, if such forms, formalities and requisites are not observed in its celebration.

126, 135, 136, 137, 138. 12 and 19 of law 57 of 1887. 21 and 50 of law 153 of 1887.

ART. 116. A male twenty-one years of age or over and a female eighteen years of age or over, may freely contract marriage.

314, No. 3.

ART. 117. Persons under the ages mentioned cannot contract marriage without the express permission, in writing, of their legitimate or natural parents. If either of them should have died, or is prevented from granting this permission, the consent of the other shall be sufficient; and if they should disagree, the will of the father shall prevail in every instance.

The consent of the adopting father and mother is necessary, in the terms of this article, for the marriage of the adopted son, under twenty-one years of age, or the adopted daughter, under eighteen.

34, 118, 119, 120, 121, 123, 124, 125, 140 No. 2, 264 par. 3, 310, 314 No. 2, 339, 340, 341. 53 par. 2, of law 153 of 1887.

ART. 118. It shall be understood that the father, the mother, or other ascendant is absent, not only in the event of his or her death, but in the case of insanity or dementia, or by reason of absence from the national

* This article and art. 139 have been expressly repealed by art. 45 of law 57 of 1887, and are substituted by art. 11 of said law 57.

territory, and an early return not being expected, or on account of the place of residence being unknown.

119, 310, 311.

ART. 119. It shall also be understood that a father is absent who has been deprived of the paternal power, and a mother who by her bad conduct has been disqualified to interfere in the education of her children.

118, 310, 311, 312, 315.

ART. 120. In the absence of said father, mother or ascendants, it shall be necessary for a person under age to secure the consent of his or her general guardian, or in his absence, that of a special guardian.

117, 121, 435, 583.

ART. 121. Of the persons of whom according to this Code permission must be requested to contract marriage, only the guardian who refuses his consent is obliged to express the cause therefor.

117, 120, 122.

ART. 122. The reasons justifying the dissent of the guardian can be the following only:

1. The existence of any legal impediment.
2. The failure to execute any of the formalities prescribed in Title VIII, *Of second marriages*, in a proper case.
3. Grave danger to the health of the minor to whom permission is denied, or to the progeny.
4. Licentious living, immoderate passion for gambling, habitual drunkenness of the person whom the minor desires to marry.
5. The fact of such person suffering the penalty of *reclusión*.
6. The fact of neither of the parties having actual means for the proper discharge of the marriage obligations.

ART. 123. The celebration of the marriage cannot be proceeded with without the consent of the person or persons whose consent is necessary according to the preceding articles, or without it being shown that the respective contracting party can freely marry.

116, 117, 120, 264 par. 3.

ART. 124. He who shall not have reached the proper age and shall marry without the consent of an ascendant, when obliged to obtain it, may be disinherited not only by the person or persons whose consent was necessary, but also by all other ascendants. If any of the latter should die without leaving a will, the descendant shall receive only one-

half the property he would have been entitled to in the succession of the deceased.

116, 117, 123, 125, 1266 No. 4, 1268.

ART. 125. The ascendant, without whose necessary consent the descendant may have married, may for this cause revoke the donations he may have made him before the marriage.

A marriage contracted without the necessary consent of the person of whom there is an obligation to obtain it, does not cause a loss of the right to support.

116, 117, 123, 124, 1268 par. 2, 1036.

ART. 126. The marriage shall be celebrated before the judge of the district of the residence of the woman, in the presence and with authority of two competent witnesses, previously sworn.

115, 135, 127. 12 and 19 of law 57 of 1887. 21 and 50 of law 153 of 1887.

ART. 127. The following cannot be witnesses to be present at and authorize a marriage.

1. Women.
2. Persons under eighteen years of age.
3. Persons interdicted by reason of insanity.
4. All those actually deprived of reason.
5. The blind.
6. The deaf.
7. The dumb.
8. Those sentenced to the penalty of *reclusion* for more than four years, and in general those who by an executed sentence should be disqualified to be witnesses.
9. Foreigners not domiciled in the Republic.
10. Persons who do not understand the language of the contracting parties.

126, 1068, 2587.

ART. 128. Those who shall desire to contract marriage, shall apply to the judge of competent jurisdiction, verbally or in writing, stating their intention. At this act or in the respective communication, they shall state the names of their parents or guardians, as the case may be, and those of the witnesses who are to testify as to the qualifications

necessary in the contracting parties to be able to join in marriage, it being necessary in every case to indicate the residence of such persons.

115, 126, 135. 12 and 19 of law 57 of 1887. 21 and 50 of law 153 of 1887.

ART. 129. The judge shall immediately proceed, *ex proprio motu*, to take all the steps necessary to obtain the permission referred to in article 117 of this Code, if necessary, and to take the depositions of the witnesses indicated by the petitioners.

115, 126, 128, 135.

ART. 130. The judge shall question the witnesses, with the legal formalities, and shall examine them as to the qualifications required in the contracting parties to join in marriage, for which purpose he shall read article 140 of this Code to them; he shall also examine them on any other matters which he may believe necessary to form a proper judgment.

174.

In view of the statements of the witnesses, he shall cause an edict to be posted for fifteen days, on the door of his office, announcing therein the petition made, the names and surnames of the contracting parties, and the place of their birth, in order that within the period of the edict he who believes he has a right to prevent the marriage may appear, or in order that the impediments existing between the contracting parties may be announced by the person having a right to do so.

128, 129, 131, 140.

ART. 131. If the contracting parties are residents of different parochial districts, or if either of them should not have six months' residence in the district in which he may be, the judge of the residence of the woman shall request the judge of the residence of the male to post the edict referred to in the preceding article, and upon the conclusion of the term, that it be sent him with a memorandum thereon that it was posted for fifteen consecutive days. Until this shall have been done, no subsequent proceedings shall be had.

128, 129, 130, 134.

ART. 132. If there should be opposition, and its cause should be capable of preventing the celebration of the marriage, the judge shall order that within the next eight days the persons interested present the

evidence of the opposition; upon the termination of this period, he shall fix a day for the holding of the hearing, and after citing the parties, a decision shall be rendered regarding the opposition within three days after the holding of the hearing.

117, 120, 123, 140.

ART. 133. Decisions rendered in these proceedings may be appealed from to the immediate superior, who shall proceed in these matters as in ordinary suits of greater import; from the decision rendered in second instance, the only remedy is that of complaint.

ART. 134. After the proceedings mentioned in article 130 have been had, and if there should be no opposition, or if, there having been opposition, it has been declared not well taken, a day and hour shall be fixed for the celebration of the marriage, which shall be within the following eight days; this decision shall be communicated to the parties interested at once.

ART. 135. The marriage shall be celebrated by the appearance of the contracting parties in the office of the judge, before him, his secretary, and two witnesses. The judge shall inquire of the parties whether they join in matrimony of their own free will; he shall inform them of the nature of the contract and of the mutual duties they are about to assume explaining to them for the purpose articles 152, 153, 176 *et seq.*, of this Code. Thereupon a record shall be made of all that has taken place, which shall be signed by the contracting parties, the judge, the witnesses and the secretary; whereupon the marriage shall be declared to be perfected.

115, 126, 137, 138.

ART. 136. If either or both of the contracting parties should be in imminent danger of death, and on this account there should not be time to take the measures referred to in article 130, the celebration of the marriage may be proceeded with without such formalities, provided the contracting parties prove that they are not included in any of the cases of article 140. But if after the expiration of forty days, the death feared should not have occurred, the marriage shall be void, if not revalidated, all legal formalities being observed.

ART. 137. The record shall contain, in addition, the place, day, month and year of the celebration of the marriage, the names and surnames of the contracting parties, those of the judge, witnesses, and secretary. After the record has been registered, it shall at once be sent to the respective notary for the purpose of filing in the protocol and issuing a copy to the persons interested. No fees shall be charged for these acts.

135, 364.

ART. 138. The consent of the spouses must be pronounced in a perceptible voice, without equivocation, and by the parties themselves, or must be shown by signs which do not admit of doubt.

ART. 139.* A marriage celebrated by proxy shall be valid, provided that the names of the spouses are very clearly expressed, and the power is not revoked before the celebration of marriage.

The notary before whom the revocation is made shall state the precise hour it takes place.

* This article and art. 114 have been repealed expressly by art. 45 of law 57 of 1887, and have been substituted by art. 11 of said law 57.

TITLE V.

Of the Nullity of Marriage and its Effects.

ART. 140. A marriage is null and void in the following cases:

1. When there has been error regarding the persons of both contracting parties or of one of them.

142, 1512, 1502, 1508.

2. When it has been contracted between a male under fourteen and a woman under twelve years of age, or when either of the two was respectively under said age.

117, 143.

3. When the consent of either or of both of the contracting parties should have been wanting in its celebration. The law presumes a want of consent in the violently insane, while in a state of insanity, and in those suffering from loss of reason upon whom a judicial interdiction from the management of their property shall have been imposed. But the deaf and dumb, if they can clearly express their consent by manifest signs, shall validly contract marriage.

Nos. 5 and 6 of this article, 138, 144, 1502 No. 2, 553, 560, 1504.

4. When it has not been celebrated before the judge and the competent witnesses.*

126, 144. 15 of law 57 of 1887

5. When it has been contracted through force or fear sufficient to oblige one to act without liberty; whether the force be employed by the person desiring to contract marriage or by another person. The force or fear shall not be a cause for the nullity of the marriage, if, after the force having disappeared, the marriage be ratified by express words, or by the mere cohabitation of the consorts.

Nos. 3 and 6 of this article, 145, 1502 No. 2, 1508, 1513, 1514.

6. When there has not been freedom in the consent on the part of the

* This paragraph has been expressly repealed by art. 45 of law 57 of 1887, and substituted by par. 1 of art. 13 of said law 57.

woman, on account of her having been violently abducted, unless she consents thereto, being beyond the power of the abductor.

Articles cited, and Nos. 3 and 5 of this art.

7. When it shall have been celebrated between an adulterous woman and her accomplice, provided that before the marriage the adultery should have been declared established in court.

52, par. 4, 146. 15 of law 57 of 1887.

8. If one of the contracting parties has killed or caused to be killed the spouse with whom he was united in a former marriage.

146. 15 of law 57 of 1887.

9. When the contracting parties are in the same ascending or descending line or are brother and sister.

52, par. 5, 146. 8 and 15 of law 57 of 1887.

10.* When it has been contracted between the stepfather and the stepdaughter, or between the stepson and the stepmother.

146. 15 of law 57 of 1887.

11. When it has been contracted between the adopting father and the adopted daughter, or between the adopted son and the adopting mother, or the woman who was the spouse of the adopter.

146, 269, 275. 15 of law 57 of 1887.

12.† When with regard to the man or the woman, or both, the bonds of a former marriage are still in force.

146, 152. 15 of law 57 of 1887.

13.† When celebrated between a woman under twenty-one years of age, even though she should have obtained qualification as to age, and the tutor or curator who may have administered or is administering her property, if the account of the administration had not been approved by the judge; and

146, 621. 14 of law 57 of 1887.

* This paragraph has been expressly repealed by art. 45 of law 57 of 1887, and substituted by No. 2 of art. 13 of said law 57.

† Expressly repealed by art. 45 of law 57 of 1887, and substituted by art. 14 of said law.

14.* When it has been contracted between the descendants of the tutor or curator of a minor and the respective ward; even though the ward should have obtained qualification as to age.

A marriage celebrated in contravention of the provisions of this or of the preceding paragraph, shall subject the tutor or curator who contracted or permitted it to the loss of any remuneration which may be due him by reason of his charge, without prejudice to the other penalties which the laws may impose.

16 and 17 of law 57 of 1887.

ART. 141.† The provisions of paragraphs 13 and 14 of the preceding article shall not apply if the marriage is authorized by the ascendant or ascendants whose consent may be necessary to contract it.

ART. 142. The nullity referred to in No. 1 of art. 140 cannot be alleged except by the contracting party who suffered the error.

The annulment of the marriage cannot take place from error if the person who suffered it should have continued in cohabitation after having known of the error.

ART. 143. The nullity referred to in No. 2 of the said article, may be pleaded by the father or tutor of the minor or minors; or by the latter through a curator *ad litem*; but if pleaded after the expiration of three months from the date the minors shall have reached puberty, or when the woman, even though under the age of puberty, should have conceived, the annulment of the marriage cannot take place.

ART. 144. The nullity referred to in Nos. 3 and No. 4 can be pleaded only by the contracting parties or by their parents or guardians.

ART. 145. The nullities referred to in Nos. 5 and 6 can be declared only at the petition of the person who was the victim of the force, who was caused the fear or obliged to consent.

There shall be no reason for the nullity for the causes mentioned in said paragraphs, if after the spouses shall have been at liberty, they shall have lived together for a period of three months, without complaining.

ART. 146.‡ The other nullities referred to in article 140 are absolute; the judge must declare them even *ex proprio motu* and they cannot be avoided by the ratification of the parties, nor by a lapse of time less than twenty years.

The nullities referred to in Nos. 13 and 14 are not declared at the in-

* Expressly repealed by art. 45 of law 57 of 1887, and substituted by art. 14 of said law.

† Expressly repealed as these paragraphs have been by art. 45 of law 57 of 1887, it is evident that this article is virtually and impliedly repealed.

‡ This article is expressly repealed by art. 45 of law 57 of 1887, and is substituted by art. 15 of said law.

stance of the judge, and the act may be ratified after the expiration of five years.

The nullity in case of bigamy does not admit of ratification as long as the previous bonds exist.

ART. 147.* With the exception of the causes mentioned in article 140, there are no others which invalidate a marriage contract: other faults committed in its celebration shall subject the guilty parties to the penalties established in the Penal Code.

ART. 148. Upon the annulment of a marriage, all the mutual rights and obligations resulting from a marriage contract cease from the very day of such annulment between the separated spouses; but should there have been bad faith on the part of either of the contracting parties, the latter shall be obliged to indemnify the other for all the losses occasioned him, estimated under oath.

140, 150, 151, 225 par. 2, 1846. 13 and 17 of law 57 of 1887. 51 of law 153 of 1887.

ART. 149. Children procreated in a marriage which is declared null, are legitimate, remain under the power of the father and shall be supported and educated at the expense of the father and the mother, for which purpose they shall contribute such portion of their property as the judge may designate; but if the marriage shall have been annulled through the fault of one of the spouses, the cost of support and education of the children shall be defrayed by him, if he have means therefor, and otherwise, by the one who has.

51, 213, 236, 52 par. 4, 225 par. 2, 228, 229, 230, 160, 161, 205, 253, 257, 258. 6 of law 57 of 1887. 52 of law 153 of 1887.

ART. 150. The donations and promises which, in consideration of the marriage, may have been made by the spouse to one who married in good faith, shall subsist, notwithstanding the declaration of the nullity of the marriage.

112, 148, 164, 1846, 1194, 1443.

ART. 151. In the same decision which contains the declaration of the nullity of a marriage, the proper order shall be made for the trial and prompt punishment of those guilty, and the rights pertaining to the innocent spouse and to his or her children, in the property of the other

* This article is also expressly repealed by art. 45 of law 57 of 1887, and is replaced by art. 16 of said law.

spouse, shall be precisely determined, as well as the quota which each spouse must contribute to the education and support of the children, and the restitution of the property brought to the marriage; such other incidental issues as may have been raised by the parties shall also be decided.

148, 149, 150.

See arts. 17, 18, and 19 of law 57 of 1887, and 51 of law 153 of 1887.

TITLE VI.

Dissolution of Marriage.

ART. 152. Marriage is dissolved by the death of one of the spouses.

1820, No. 1.

TITLE VII.

Of Divorce, its Causes and Effects.

PARAGRAPH 1.

Of Divorce.

ART. 153. A divorce does not dissolve a marriage, but suspends the common life of the married.

152, 155, 156, 178, 225. 20 of law 57 of 1887.

PARAGRAPH 2.

Causes for Divorce.

ART. 154. The following are grounds for divorce:

1. Adultery on the part of the wife.
2. Concubinage on the part of the husband.
3. Habitual drunkenness of one of the spouses.
4. The absolute abandonment on the part of the wife of the duties of a wife and mother, and the absolute abandonment on the part of the husband of the fulfillment of the duties of a husband and father.
5. Cruel treatment, assault, if the life of the spouses is endangered thereby, or domestic peace and harmony are rendered impossible.

ART. 155. Insanity, contagious disease, and any other similar misfortune in either of the spouses, does not authorize a divorce, but the judge may, after an investigation, and at the instance of the other spouse, briefly and summarily suspend the obligation to cohabit, but the other conjugal obligations due the unfortunate spouse shall nevertheless subsist.

176, 178, 179.

ART. 156. A suit for divorce may be brought only by the party who did not give cause therefor, and only the spouses or their parents shall be parties to the suit; but the opinion of the public prosecutor shall always be heard, on account of the interest of the children or that of the wife, in the absence of succession.

ART. 157. At the time of admitting the suit for divorce, or before, in an urgent case, the following measures shall be provisionally adopted by the judge, only while the trial lasts:

1. To separate the spouses in every case.

2. To place the wife in the custody of her parents or nearest relatives, and in the absence or excuse of the latter, in such house as the judge shall determine.

227.

3. To place the children under the care of one of the spouses, or of both, or of another person, the provisions of articles 160 and 161 being observed.

4. To fix the amount which the husband must allow the wife for her dwelling and food and that of the children remaining under her power, and for costs of litigation; and

158.

5. To decree, in the event of the woman being pregnant enceinte, the necessary precautions, if the husband should so request, to prevent a fictitious birth, the provisions of Chapter 2, Title X, Book 1, of this Code, being observed.

225 *et seq.* 20 of law 57 of 1887.

ART. 158. During the suit for separation, the administration of the property common to the spouses shall continue under the charge of the husband, under the obligation prescribed in No. 4 of the preceding article.

The judge may, on petition of the wife, decree such provisional measures as he may deem proper, in order that the husband, as administrator of the property of the wife, may not cause her any loss.

201.

ART. 159. A reconciliation puts an end to a suit for divorce, and leaves without any subsequent effect the final decision rendered therein; but the spouses must inform the judge or court taking cognizance of the matter, or the judge of first instance, if the suit is closed, of such reconciliation.

167. See Art. 18 of law 57 of 1887.

PARAGRAPH 3.

Effects of Divorce.

ART. 160. Upon a decision decreeing a divorce becoming final, the children under seven years of age, and especially the girls, shall remain in the custody of the mother.

149, 161.

ART. 161. If the divorce shall have been decreed on account of any of the causes mentioned in paragraphs 1 and 4 of article 154 having been proved, all the children over three years of age, without distinction as to sex, shall pass into the custody of the innocent spouse, the expenses of support and education of the same being defrayed by both consorts, and regulated by the judge.

149, 160. 62, 63 and 64 of law 153 of 1887.

ART. 162. The property of the wife shall be restored to her and her part of the acquets and gains of the conjugal partnership shall be given her, as in the case of a dissolution of the marriage, without prejudice to the exceptions which will be set forth.

1820 *et seq.*

ART. 163. If the wife shall have given cause for divorce by reason of adultery, she shall lose all her right to the acquets and gains, and the husband shall have the administration and the usufruct of her property, excepting such as the wife may administer as separate property and that which she may acquire under any title after the divorce.

In such case the husband shall always give security, to the satisfaction of the judge, for the value of the property he may administer. Such administration shall not take place when there has been no succession in the marriage.

166, 197, 1776. 411, subdivision 4.

ART. 164. The innocent spouse may revoke the donations he or she may have made to the guilty one.

112, 150, 1846, 1194, 1443.

ART. 165. A divorced woman administers independently of the husband the property which she has removed from his power, or which she shall acquire after the divorce.

162, 163, 204.

ART. 166. A husband who shall have given cause for the divorce, preserves the obligation of contributing to the suitable and proper support of his divorced wife, and the judge shall fix the amount and form of the alimony, taking into consideration the circumstances of both.

163, 411, subdivision 4.

ART. 167. If the divorced couple shall become reconciled, things, with regard to the conjugal partnership and the administration of property,

shall return to their condition prior to the divorce, as if the latter had never taken place.

Such return shall be decreed by the judge, on the petition of both parties, and shall produce the same effect as the re-establishment of the administration of the husband, in the case of Art. 210 of this Code.

159.

ART. 168. The effects of the divorce with regard to the legitimate children of the divorced couple, shall be governed by the respective provisions contained in Book 1, Title 12, *Of the rights and obligations between parents and legitimate children.*

20 of law 57 of 1887.

TITLE VIII.

Of Second Nuptials.

ART. 169. A widowed male who, having children of a prior marriage under his paternal power, or under his tutor or curatorship, shall desire to marry again, must make a formal inventory of the property which he may be administering and that belongs to them as heirs of his deceased wife, or under any other title.

A special curator shall be appointed to the children for the purpose of preparing this inventory.

122 No. 2, 297, 435, 583.

ART. 170. A curator shall be appointed even though the children have no property of their own in the possession of the father. In such case, the special curator must certify thereto.

ART. 171. The civil authority shall not permit the marriage of a widower desiring to remarry, without the presentation of an authenticated certificate of the appointment of a special curator for the purposes aforementioned, or until a summary investigation is made showing that the widower has no children by a prior marriage, under his paternal power, or under his tutorship or curatorship.

1758.

ART. 172. A widower who, through his negligence, shall have failed to make the inventory prescribed in the preceding article in due time, shall lose his right to succeed as forced heir or as intestate heir of the child whose property he has administered.

1027.

ART. 173. When a marriage shall have been dissolved or declared void, a woman who is pregnant cannot marry again before the birth, or (if there be no signs of pregnancy) before the expiration of two hundred and seventy days following the dissolution or declaration of nullity.

But from this term may be deducted all the days which may have immediately preceded such dissolution or declaration, during which it shall have been absolutely impossible for the husband to have had access to the wife.

234, 235.

ART. 174. The civil authority shall not permit the marriage of a woman until she shall prove that she does not suffer the impediment referred to in the preceding article.

130, par. 1.

ART. 175. A widow who, having children by a prior marriage under her tutorship or curatorship, shall desire to remarry, must comply with the provisions of article 599.

1331.

TITLE IX.

Obligations and Rights Between the Spouses.

CHAPTER I.

General Rules.

ART. 176. The spouses are obliged to be faithful to each other, to mutually assist and succor each other in all conditions of life.

The husband owes protection to the wife, and the wife obedience to the husband.

ART. 177. The marital power is the aggregation of rights which the laws grant the husband over the person and property of the wife.

1805 *et seq.*

ART. 178. The husband has the right to oblige his wife to live with him and to follow him wherever he may transfer his residence.

This right ceases when its enforcement would entail imminent danger to the life of the wife.

The wife, on her part, has the right to be received by the husband in his house.

153.

ART. 179. The husband must furnish the wife what is necessary according to his powers, and the wife has a similar obligation with regard to the husband, if the latter should lack property.

411 No. 1, 419, 1796 No. 5.

ART. 180. By the act of the marriage a property partnership is entered into between the spouses, and the husband assumes the administration of that of the wife, according to the rules which will be laid down in Title XXII, Book 4, *Of Marriage Agreements and of the Conjugal Partnership.*

162, 163, 165, 167, 200, 1805, 1806, 2189 No. 8, 2502 No. 3.

Those who may have married outside of a Territory and shall take up their domicile herein, shall be considered separate in property, provided that in accordance with the laws under which they married no property partnership had existed between them.

ART. 181. Without the written authority of the husband, the wife cannot appear in court, either in person or through an attorney, whether sued or bringing an action.

But the authority of the husband is not necessary in a criminal or police cause against the wife, nor in litigation of the wife against the husband, or of the husband against the wife.

The husband, nevertheless, shall always be obliged to furnish the wife the assistance she may require for her judicial actions or defense.

2347 par. 4, 307, 308.

ART. 182. The wife cannot, without the authority of the husband, enter into any contract, nor withdraw from a prior contract, nor remit a debt, nor accept or repudiate a gift, inheritance or legacy, nor acquire under an onerous or lucrative title, nor convey, mortgage or pledge.

191, 192, 242 par. 2, 784, 1282, 1293, 1307 par. 2, 1504 par. 3, 1796 No. 2, 1807, 1808, 2243, 2262.

ART. 183. The authority of the husband must be granted in writing or by his personally intervening, expressly and directly, in the act.

The authority of the husband cannot be presumed except in the cases prescribed by law.

192, 195, 301 par. 2, 1767.

ART. 184. The wife does not need the authority of the husband to dispose of her own property by a testamentary act which is to go into effect after her death.

165, 204, 1061 last par., 309.

ART. 185. The authority of the husband may be general for all the acts in which the wife requires it, or special for one class of affairs or for a specific business.

ART. 186. The husband may at will revoke, without any retroactive effect, the special or general authority he may have granted the wife.

2191, 2199.

ART. 187. The husband may ratify the acts for which he may not have granted his wife authority, and the ratification may also be general or special.

The ratification may be implied, by acts of the husband unequivocally manifesting his acquiescence.

742 par. 2, 767, 2186 par. 2, 302.

ART. 188. The authority of the husband may be supplied by that of the judge, after an investigation, when the husband refuses it without just cause, and the wife suffers loss thereby.

It may likewise be supplied by the judge in the case of any impediment on the part of the husband, such as real or apparent absence, when the delay would entail loss.

191.

ART. 189. Neither the wife nor the husband, nor both together, may alienate or mortgage the real property belonging to the wife, except in the cases and with the formalities which will be set forth in the Title *Of the Conjugal Partnership*.

204, 1810, 1811, 303, 483, 749.

ART. 190. If by reason of an impediment of long and indefinite duration, such as interdiction, prolonged absence, or disappearance, the exercise of the marital power is suspended, the provisions of Chapter 4, of the Title *Of the Conjugal Partnership*, shall be observed.

539, 551, 1814, *et seq.*

ART. 191. The judicial authority represents that of the husband, and produces the same effects, with the difference stated below.

A wife acting with the authority of the husband, binds the husband as to his property in the same manner as if the act were of the husband; and binds in addition her own property to the extent of the particular benefit she may derive from the act: the same shall be the case if the wife has been judicially authorized on account of a temporary impediment in the husband in urgent cases, provided that the consent of the latter could have been presumed.

But if the wife shall have been authorized by the judge against the will of the husband, her own property only shall be bound; but she will not obligate the partnership property nor the property of the husband, except to the extent of the benefit which the partnership, or the husband, may have derived from the act.

Furthermore, if the judge should authorize the wife to accept an inheritance, she must accept it under the benefit of inventory; and without this requisite she will subject only her own property to the results of the acceptance.

206, 211 rule 4, 302, 1330, 1796 No. 2, 1806 par. 2, 1807, 1808, 1282 par. 4, 1304, 1307 par. 2, 1815.

ART. 192. The authority of the husband is presumed in the purchase of movable things by the wife for cash.

The authority of the husband is also presumed in purchases on trust, of articles naturally destined to the ordinary consumption of a family.

But it is not presumed in the purchase on trust of articles of luxury, jewelry, valuable furniture, not even in the purchase of such as are naturally destined for clothing and housekeeping purposes, unless it be proved that they were purchased or employed in the use of the wife or of the family, with the knowledge of and without any objection on the part of the husband.

66 par. 2 and 3, 183 par. 2, 195, 261, 301 par. 2, 1807, 1808, 1776 par. 2, 1504 par. 3, 1747.

ART. 193. A husband under the age of eighteen years requires a curator for the administration of the conjugal partnership.

432, 340.

ART. 194. The rules contained in the preceding articles are subject to exceptions or modifications for the following causes:

1. The fact of the wife being engaged in a profession, industry or trade.
2. The separation of property.

CHAPTER 2.

Exceptions Relative to the Profession or Trade of the Wife.

ART. 195. If a married woman publicly engages in any profession or industry whatsoever (such as principal of a college, school teacher, actress, midwife, innkeeper, nurse), the general authority of the husband is presumed for all acts and contracts concerning her profession or industry, as long as there is no objection or protest on the part of her husband, notified in advance to the public, or specially to the party contracting with the wife.

66 pars. 2, 1776, 212, 1807, 1808.

ART. 196. A married woman engaged in commerce, is subject to the special rules laid down in the Code of Commerce.

CHAPTER 3.

Exceptions Relative to a Simple Separation of Property.

ART. 197. A simple separation of property is that which is effected without a divorce, by virtue of a judicial decree, or by a provision of law.

163, 165.

ART. 198. A woman cannot renounce in a marriage agreement the power to demand the separation of the property to which she is entitled by law.

6 par. 2, 15, 1526, 1773.

ART. 199. In order that a woman under age may request a separation of property, she must be authorized therefor by a special curator.

435, 583.

ART. 200. The judge shall decree the separation of property in the event of the insolvency or fraudulent administration of the husband.

If the affairs of the husband should be in a bad condition, as a consequence of reckless speculation, or an improper or careless administration, he may object to the separation, giving bonds or mortgages sufficient to secure the interests of the wife.

163 par. 2, 539, 551 par. 2, 209, 210.

ART. 201. Proceedings for the separation of property having been instituted, the judge may, on the petition of the wife, adopt such measures as he may consider of advantage to the interests of the latter, during the pendency of the proceedings.

158, par. 2.

ART. 202. In proceedings for the separation of property on account of the bad condition of the affairs of the husband, the confession of the latter is not proof.

1795, par. 2, 2505.

ART. 203. The separation of property having been decreed, the property of the wife shall be delivered to her, and with regard to the division of the acquets and gains of the conjugal partnership, the same rules shall be observed as in the case of the dissolution of marriage.

The wife shall from then on receive no share whatsoever of the acquets and gains, of the conjugal partnership arising from the administration of the husband; and the husband, on the other hand, shall receive no share of such acquets and gains due to the administration of the wife.

162, 163, 165, 1809 par. 2, 1820 No. 3.

ART. 204. A wife separate in property does not require the authority of her husband for the acts and contracts relative to the administration and enjoyment of what she administers separately.

Nor does she require the authority of the husband to alienate, under any title, the movables which she administers separately.

But she does require this authority, or that of the judge, to appear in court, even in proceedings relating to her separate administration, reserving the exceptional cases mentioned in article 181.

165, 182, 184, 189, 208, 211 rule 2, 439 last par., 539, 551.

ART. 205. In the condition of separation, both spouses must provide for the necessities of the common family in proportion to their powers. The judge, in a necessary case, shall adjust the contribution.

161, 257, 258.

ART. 206. The creditors of a wife separate in property by reason of acts or contracts which could have been legitimately entered into by her, shall have a right of action upon the property of the wife.

The husband shall not be responsible with his property, unless he shall have countenanced as surety, or otherwise, the obligations contracted by the wife.

He shall also be liable, in proportion to the benefit he may have derived from the obligations contracted by the wife; there being comprised in this benefit that of the common family, in the part in which by law he should have provided for the necessities of the latter.

A simple authority does not make him liable.

191 par. 3, 211 rule 3, 1806 par. 2, 1815, 1816.

ART. 207. If the wife separate in property confers upon the husband the administration of any of such property, the husband shall be obligated to the wife as a simple agent.

221 rule 2, 2157 *et seq.*

ART. 208. The wife separate in property shall be given a curator for the administration thereof, in all cases in which if she were single she would require a curator to administer the same.

The right granted the husband in article 204 shall not cease by virtue of this curatorship.

439, par. 3.

ART. 209. A separation of property, judicially decreed on account of the bad state of the affairs of the husband, may terminate by a decree of the judge, on the petition of both spouses; and without this requisite the separation shall legally subsist.

ART. 210. The legal re-establishment of the administration of the husband restores things to their previous condition, as if the separation of property had never existed. But all the acts executed by the wife legitimately, during the separation of property, shall be valid as if the court had authorized them.

The husband, in order to safeguard his liability, shall make a formal inventory of the property of the wife which again comes under his administration.

167, 209, 1819.

ART. 211. If a donation be made to a married woman, or if she be left an inheritance or legacy under the precise condition that the husband should not have the administration of the things donated, inherited, or bequeathed, and if said donation, inheritance, or legacy should be accepted by the wife with the authority of the husband or of the judge in his place, the following rules shall be observed:

1. The husband must require that the inheritance be accepted under the benefit of inventory, under the penalty of becoming liable with his property for the results of the acceptance.

1304, 1307 par. 2.

2. With regard to things donated, inherited or bequeathed, the provisions of articles 204 to 207 shall be observed.

3. The contracts of the wife in which the authority of the husband does not appear, and which could be celebrated by her without such authority, shall bind her as to the property which she administers separately.

206 par. 4.

4. The contracts authorized by the husband, or by the judge in his place, shall be subject to the provisions of art. 191.

5. The fruits of the things which she administers and all that she acquires therewith, shall be exclusively of the wife.

1809 par. 2.

ART. 212. If it should have been stipulated in the marriage agreement that the wife should administer part of her property separately, the rules of the preceding article shall apply to this partial separation.

1776, 1820. No. 3.

TITLE X.

Of Legitimate Children Conceived in Matrimony.

CHAPTER I.

General Rules.

ART. 213. A child conceived during the marriage of his parents is a *legitimate child*.

51, 52 par. 4, 149, 228, 229, 230, 236, 237, 238, 239, 245, 246. 6
and 20 of law 57 of 1887. 52 of law 153 of 1887.

ART. 214. A child born after the expiration of one hundred and eighty days next following the marriage, is considered to have been conceived therein, and has the husband for father.

The husband, however, need not recognize the child as his own, if he shall prove that during the entire time in which, according to article 92, the conception could have been presumed, it was an absolute physical impossibility for him to have had access to his wife.

92, 237, 217, 220, 230.

ART. 215. Adultery on the part of the wife, even though committed during the time in which the conception could have taken place, does not in itself authorize the husband not to recognize the child as his own. But if the adultery be proved during such period, any proof he shall present of any other acts as evidence that he is not the father, shall be admitted.

ART. 216. During the life of the husband, no one can charge the illegitimacy of the child conceived during the marriage, but the husband himself.

335 No. 1, 337.

ART. 217. Any complaint of the husband against the legitimacy of the child conceived by his wife during marriage, must be made within sixty days from the date on which he had knowledge of the birth.

The residence of the husband in the place of the birth of the child leads to a presumption that he knew thereof immediately; unless it be proved that there was a concealment of the birth on the part of the wife.

218, 237 par. 4, 247.

ART. 218. If at the time of the birth the husband was absent, it shall be presumed that he had knowledge thereof immediately after his return to the residence of the wife, excepting in the case of concealment mentioned in the preceding paragraph.

ART. 219. If the husband should die before the expiration of the time granted him by the laws to declare that he does not recognize the child as his own, this may be done in the same terms by the heirs of the husband, and in general by any person whom the alleged legitimacy of the child may cause actual damage.

Such right shall cease, if the father shall have recognized the son as his own in a testament or in another public instrument.

221, 222, 248 last par., 327, 335 *et seq.*

ART. 220. On the petition of any person having an actual interest therein, the judge shall declare the illegitimacy of a child born after the expiration of three hundred days next following the dissolution of the marriage.

If it shall have been an absolute physical impossibility for the husband to have had access to the wife before the dissolution of the marriage, the three hundred days shall be counted from the date upon which this impossibility began.

What has been said regarding the dissolution applies to the case of the separation of the spouses by a declaration of the nullity of the marriage.

221, 248 No. 1, and last par.

ART. 221. The heirs and other persons actually interested shall be allowed, for the purpose of instituting proceedings charging illegitimacy, a period of sixty days from the day they heard of the death of the father, in the case of article 219, or upon which they heard of the birth of the child, in the case of article 220.

If the persons interested shall have entered upon actual possession of the property without objection on the part of the alleged legitimate child, they may plead the illegitimacy at any time that he or his heirs should dispute their rights.

If the husband shall have disappeared, the first of the terms fixed in this article shall be counted from the date of the first decree of possession granted his presumptive heirs.

99.

ART. 222. The legitimate ascendants of the husband shall have the right to institute proceedings charging illegitimacy, even though they have no part whatsoever in the succession of the husband; but they must do so within the terms fixed in the preceding article.

ART. 223. No complaint as to the legitimacy of the son, whether made by the husband, or by another person, shall have any value, if not interposed before the judge within the proper time, which judge shall appoint a curator for the child requiring one, for his defense in such proceedings.

217, 218, 221.

The mother shall be cited, but not obliged to appear in the proceedings.

The testimony of the mother in proceedings as to the legitimacy of the child that she conceived him in adultery, shall not be admitted.

ART. 224. During the proceedings, the legitimacy of the child shall be presumed, and he shall be supported and treated as legitimate; but the illegitimacy having been judicially declared, the husband, or any other complainant, shall have the right to have the mother compensate him for all damages he may have suffered through the alleged legitimacy.

417.

CHAPTER 2.

*Special Rules for Cases of Divorce and Nullity of Marriage.**

ART. 225. A recently divorced woman, or one who, during the pendency of divorce proceedings, being actually separated from her husband, should believe herself to be pregnant, shall inform the husband thereof within the first thirty days of the actual separation.

A similar announcement shall be made by the wife who during proceedings for the annulment of a marriage, or the annulment having been recently declared, shall believe herself to be pregnant.

If the wife should make these announcements after said thirty days, they shall be valid, provided the judge, after an investigation, shall declare that the delay was justifiable or excusable.

157 rule 5, 231, 232.

ART. 226. The husband may, in view of this announcement, or even without it, send the wife a suitable companion to take care of her, and in addition a midwife to be present at the birth; and the wife who believes herself to be pregnant shall be obliged to receive them, unless the judge, finding the objections of the wife to the persons the husband may have sent, to be well founded, shall select others for such care and attendance.

* See arts. 20 of law 57 of 1887, 51 and 213 of this Code.

The care and attendance shall be at the expense of the husband; but if it be proved that the wife acted in bad faith, pretending to be pregnant without being so, or that the child is adulterine, the husband shall be indemnified.

The care and attendance may last the time necessary, in order that there may be no doubt as to the fact and circumstances of the birth, or as to the identity of the recently born.

229, 230.

ART. 227. The husband shall also have the right to have the wife placed with a respectable family in which he has confidence and the wife who believes herself to be pregnant must reside with such family, unless the judge, after hearing the reasons of the wife and the husband, shall deem it advisable to designate another.

157, No. 2.

ART. 228. If the care and attendance do not take place because the wife has not informed the husband of the pregnancy, or because without just cause she has refused to change her residence, her husband having requested it, or because she has removed herself from the care of the family or persons selected for the care and attendance, or because she has eluded their vigilance in any way, the husband shall not be obliged to recognize the fact and circumstances of the birth, except in so far as they are unequivocally proved on the part of the wife or of the child, in proceedings in which both parties are heard (*juicio contradictorio*).

ART. 229. If the husband, after the aforementioned announcement, should not avail himself of his right to send the caretaker and midwife, or to place the woman with a reputable and trustworthy family, he shall be obliged to accept the declaration of the wife regarding the fact and circumstances of the birth.

ART. 230. Even though the husband take all the precautions permitted him by the preceding articles, or without them, the fact and circumstances of the birth be satisfactorily established, he retains the right not to recognize the child as his own, in accordance with articles 213 and 214, by instituting proceedings as to the illegitimacy within the proper time.

ART. 231. If the announcement prescribed by article 225 cannot be made to him, it may be made to any of his relatives by consanguinity within the fourth degree, over twenty-one years of age, the legitimate ascendants being given the preference; and the person to whom the announcement is made may adopt the measures indicated in articles 226 and 227.

CHAPTER 3.

Rules Relative to the Posthumous Child.

ART. 232. The husband being dead, the woman who believes herself to be pregnant may announce it to those who, if the posthumous child should not exist, would be called upon to succeed the deceased.

The announcement must be made within thirty days next following her knowledge of the death of the husband, but a delay may be justified or excused, as in the case of article 225, third paragraph.

The persons interested shall have the rights granted the husband in the case of a recently divorced woman, but subject to the same restrictions and charges.

ART. 233. The mother is entitled to receive from the property which will belong to the posthumous child, if he be born alive and within the proper time, what may be necessary for her maintenance and the birth; and even though the child be not born alive, or there should have been no pregnancy, she shall not be obliged to return what may have been allowed her; unless it be proved that she has acted in bad faith, pretending pregnancy, or that the child is illegitimate.

417, 418.

CHAPTER 4.

Rules Relative to the Case of a Woman Contracting a Subsequent Marriage.

ART. 234. When, by reason of a woman having contracted a new marriage, there should be doubt as to which of two marriages a child belongs, and a judicial decision is requested, the judge shall decide by taking into consideration the circumstances, and hearing in addition the opinion of physicians, if he should deem it advisable.

173.

ART. 235. A woman who shall have contracted a new marriage before the proper time and her new husband, shall be bound *in solido* to compensate all damages and expense incurred by third persons on account of the uncertainty of the paternity.

173.

TITLE XI.

Of Legitimated Children.

ART. 236. Legitimate children are also those conceived out of wedlock and legitimated by the marriage subsequently contracted by their parents, according to the rules and under the following conditions.

51, 52, 213, 149, 245. 6 and 20 of law 57 of 1887. 52 of law 153 of 1887.

ART. 237.* A subsequent marriage legitimates *ipso jure* the children conceived before such marriage and born during the same.

The husband, nevertheless, may question the legitimacy of a child born before the expiration of one hundred and eighty days next following the marriage, if he prove that it was an absolute physical impossibility for him to have had access to the mother throughout the entire time that the conception could be presumed according to the legal rules.

But even without this proof he may question the legitimacy of the son, if he did not have knowledge of the pregnancy at the time of marriage, and if by positive acts he has not shown that he recognized the child after its birth.

In order that the complaint on the part of the husband may be valid, it shall be necessary that it be made within the term and in the form prescribed in the preceding Chapter.

92, 214 par. 2, 217 to 224. 52 of law 153 of 1887.

ART. 238. The marriage of the parents legitimates also *ipso jure* those which either may have recognized as natural children of both with the legal requisites.

52 par. 2, 318, 368. 7 of law 57 of 1887. 54-58 of law 153 of 1887.

ART. 239. With the exception of the cases of the two preceding articles, a subsequent marriage does not produce *ipso jure* the legitimacy of the children. In order that it be produced, it is necessary that the parents designate in the marriage act, or in a public instrument, the children upon whom they confer this benefit, whether such children be alive or dead.†

51, 318 1758 par. 2, 1760. 6 and 7 of law 57 of 1887. 54-58 of law 153 of 1887.

* This article is amended by art. 52 of law 153 of 1887.

† The corresponding article of the Code of Chile, 208, says: "With the exception of the two cases * * * marriage does not produce *ipso jure* the legitimation."
* * *

ART. 240. When the legitimation is not produced *ipso jure*, notice of the public instrument of legitimation must be given to the person it is desired to legitimate. And if the latter be under marital authority, or be one who requires a tutor or curator for the administration of his or her property, the notice shall be given to the husband or to the tutor or general curator, or in the absence of the latter to a special curator.

1758, 435, 583, 249.

ART. 241. A person who does not need a tutor or curator for the administration of his or her property, or who does not live under the marital power, may accept or repudiate the legitimation freely.

428.

ART. 242. A person who requires a tutor or curator for the administration of his or her property, cannot accept nor repudiate the legitimation, except with the consent of his or her tutor or general curator, or of a special curator, and after a judicial decree rendered after an investigation.

A woman living under the marital power requires the consent of her husband, or of the court in substitution, to accept or repudiate the legitimation.

435, 583, 182, 183, 188.

ART. 243. The person who accepts or repudiates, must declare it in a public instrument within ninety days next following the service of notice. Upon the expiration of this term, it shall be understood that he or she accepts, unless it be proved that it was impossible to make the declaration within the legal term.

1758, 66 pars. 2 and 3, 249.

ART. 244. The legitimation benefits the legitimate posterity of the legitimated children.

If the child legitimated be dead, the notice shall be served upon his legitimate descendants, who may accept or repudiate it in accordance with the preceding articles.

249.

ART. 245. Those legitimated by a subsequent marriage are equal in all to the legitimate children conceived in wedlock.

But the benefit of legitimation does not retroact to a date prior to the marriage which produced it.

40. 132 of law 153 of 1887.

ART. 246. The designation *legitimate children*, even though with the qualification of born of *legitimate marriage*, shall be understood to comprise those legitimated both in the laws and decrees as in testamentary acts and in contracts, unless those legitimated are markedly and expressly excepted.

236. 132 of law 153 of 1887.

ART. 247. The legitimation of one born after the celebration of the marriage, cannot be impugned except by the same persons and in the same manner as the legitimacy of one conceived in marriage.

216 to 223.

ART. 248. In other cases the legitimation may be impugned by proving any of the following causes:

1. That the person legitimated could not have had as father the person making the legitimation.

2. That the person legitimated did not have for mother the person declaring the legitimation; this allegation being subject to the provisions of Title XVIII, *Of Disputed Maternity*.

No one shall be heard against the legitimation but those who prove that they have an actual interest therein, and the legitimate ascendants of the father or mother making the legitimation; the latter within sixty days from the date they had information of the legitimation, and the former within three hundred days next following the date on which they had an actual interest, and could enforce their right.

219 *et seq.*, 327, 335. 58 par. 3, of law 153 of 1887.

ART. 249. Only the supposed legitimated person, and in the case of article 244 his legitimate descendants immediately called to the benefit of legitimation, shall have the right to impugn it on account of the omission to serve the notice or acceptance prescribed by articles 240, 243, and 244.

TITLE XII.

Of the Rights and Obligations between Parents and Legitimate Children.

ART. 250. Legitimate children owe respect and obedience to their father and their mother; but they shall be especially subject to their father.

288, 333. 53 of law 153 of 1887.

ART. 251. Although emancipation gives a child the right to act independently, he is always obliged to take care of his parents in their old age, or when in a state of dementia, and in all conditions of life in which they may need his assistance.

1025 No. 3, 411 No. 3.

ART. 252. All other legitimate ascendants are entitled to assistance of the same character, in the event of the non-existence or insufficiency of immediate descendants.

411 No. 3, 260.

ART. 253. The personal care of the raising and education of their legitimate children is the joint duty of the parents, or of the surviving father or mother.

149, 161, 205, 257, 258, 517, par. 2. 61 to 64 of law 153 of 1887.

ART. 254. The judge may, in case of the physical or moral disability of both parents, confide the personal care of the children to another competent person or persons.

In the selection of these persons, preference shall be given to the nearest consanguineous relatives, and especially to the legitimate ascendants.

260, 265.

ART. 255. For all these resolutions, the judge shall proceed briefly and summarily, after hearing the relatives.

61.

ART. 256. The father or mother from whose personal care the children shall be removed, shall not be prohibited thereby from visiting them with the frequency and liberty which the judge may consider advisable.

ART. 257. The cost of maintenance, education and establishment of legitimate children is to be borne by the conjugal partnership, according to the rules which will be laid down when treating thereof.

If the wife is separate in property, said expenses shall be defrayed by the husband, the wife contributing the proportion which the judge may designate; and even a divorced woman who may not have given cause for the divorce shall be obliged to contribute.

But if a child should have property of his own, the cost of his establishment, and, in a necessary case that of his maintenance and education, may be taken therefrom, the capitals being kept intact in so far as possible.

149, 161, 205, 253, 411 No. 2, 1796 No. 5, 334, par. 4. 62 of law 153 of 1887.

ART. 258. Upon the death of one of the parents, the expense of maintenance, education and establishment of the children shall be borne by the surviving parent, according to the terms of the final paragraph of the preceding article.

253.

ART. 259. The decisions of the judge, in the respects indicated in the preceding articles, shall be revoked by the disappearance of the cause which may have served as a ground therefor; and they may also be modified or revoked by the judge in any case and at any time, if there be just cause therefor.

ART. 260. The obligation to support and educate a child who has no property, passes, by reason of the want or insufficiency of the parents, to the legitimate grandparents by both lines conjointly.

The judge shall regulate the contribution, taking into consideration the means of the contributors, and may from time to time modify it, according to the circumstances which may arise.

252.

ART. 261. If a child under age, absent from the paternal house, should be in a condition of urgent necessity, in which he cannot be assisted by the father, the authority of the latter shall be presumed for anything which may be furnished him, by any person, for purposes of support, taking into consideration the means and social position of the father.

But if such child should observe bad conduct, or if there be reason to believe that he is absent without the consent of his father, such assistance cannot be recovered from the father, unless it was absolutely necessary for the personal physical subsistence of the child.

The person furnishing the assistance must inform the father thereof as soon as possible. Any voluntary omission in this respect, shall cause the responsibility of the father to cease.

What has been said of the father in the preceding paragraphs, applies, in a proper case, to the mother, or to the person to whom by reason of the death or disability of the parents, the support of the child falls.

66 par. 2, 192, 1504 par. 3, 1747, 301.

ART. 262. The father shall have the power to correct and punish his children in moderation, and when this is not sufficient, he may impose upon them the penalty of confinement, not to exceed one month, in a correctional institution.

For this purpose the complaint of the father shall be sufficient, and the judge by virtue thereof, shall issue the order of confinement.

But if the child have attained the age of sixteen years, the judge shall not order the confinement until the motives have been qualified, and he may extend such confinement to not more than six months.

The father may, at will, have the confinement discontinued.

288, 315 No. 1.

ART. 263. The rights granted the father in the preceding article are extended, in the absence, disability, or death of the father, to the mother or to any other person who has charge of the child; but they shall never be exercised against a child over twenty-one years of age, or who has been qualified as to age.

254, 260. 53, par. 2, of law 153 of 1887.

ART. 264. The father, and in his absence the mother, shall have the right to select the future condition or profession of the son, and of directing his education in the manner which they may consider most advantageous to him.*

But they cannot force him to marry against his will.

Nor, upon his attaining the age of twenty-one years, can they oppose his taking up an honorable career, more to his taste than that selected for him by his father or mother.

253.

ART. 265. The right granted by the preceding article to the father or mother, shall cease with regard to the children who, by reason of the bad conduct of the father or mother, shall have been removed from their power and entrusted to another person, which person shall exercise this right with the consent of the tutor or curator, if said person were not such.

161, 315 Nos. 3 and 4, 448, 254. 53, par. 2, of law 153 of 1887.

ART. 266. The rights granted legitimate parents in the preceding articles cannot be exercised over a child which may have been taken by them to the foundling asylum, or abandoned in any other manner.

268, 315, No. 2.

ART. 267. Parents who by their bad conduct should have given cause for a decree separating the children from their side, shall also incur a similar deprivation of rights, unless the decree shall have been subsequently revoked.

265, 315, Nos. 3 and 4.

ART. 268. If the child abandoned by its parents shall have been supported and brought up by another person, and the parents should desire to remove it from the power of such person, they must pay him the cost of the child's maintenance and education, as appraised by the judge.

266.

TITLE XIII.*

Of Adoption.

ART. 269. Adoption is the fathering (*prohijamiento*) of a person, or the admission in the place of a child of a person who is not one's child by nature.

The person making the adoption is called the *adopting father* or *mother*, or simply *adopter*; and the person in whose favor it is made, the *adoptive child* or simply the *adoptive* or *adopted*.

272, 287, par. 2.

ART. 270. In order to adopt it is necessary that the adopter be not under the power or dependence of another person; but a married woman may adopt as permitted by this Code.

274, 275.

ART. 271. In order to adopt it is also necessary that the adopter shall have attained the age of twenty-one years, and that he be fifteen years older than the person adopted.

ART. 272. Persons having legitimate descendants cannot adopt.

ART. 273. Adoption can take place between persons of the same sex only: the adopting father must adopt a male, and the adopting mother a female.

275.

ART. 274. A married person cannot adopt without the consent of his spouse.

ART. 275. The spouses may adopt jointly, and in this case only the adoption may be made without distinction in favor of persons of either sex.

With the exception of the case provided for in this article no one can be adopted by more than one person.

ART. 276. A tutor or curator cannot adopt the person he may have or has had under his guardianship, until the latter shall have attained the age of eighteen years, and until the former's accounts of his tutorship or curatorship shall have been finally approved and his administration closed.

ART. 277. For the adoption of a person of legal age, having the free

* This title is from the Code of Cundinamarca; it does not appear in the Chilean Civil Code.

administration of his property, his express consent is necessary: for the adoption of a minor, or of a person subject to the power of another, there is necessary, in addition, the consent of the persons respectively whose consent is necessary to permit the minor to marry, or of the person under whose power or guardianship the person to be adopted may be.

279, 117, 120.

ART. 278. In the event that the person whom it is desired to adopt has property or is under age, or who for any other cause is under the power or guardianship of another person, the adoption cannot take place without the adopter giving security, to the satisfaction of the father, tutor, curator, or person under whose power the adopted is, for the said property; the surety must furthermore be approved by the judge, and the property must also be received under a formal or judicial inventory, which shall be filed in a protocol.

293, 297.

ART. 279. For the adoption it is necessary in every case that the permission of the judge or prefect of the domicile of the adopted be first secured. If the person adopted should be under age, or a person reputed a minor, the judge shall, in addition to the measure prescribed in the foregoing article, take such other measures as he may consider necessary for the benefit of the person adopted, and for the security of his property.

277.

ART. 280. After the judicial permission shall have been obtained the proper instrument shall be prepared before the respective notary, without which the adoption shall be without effect. This instrument shall be signed by the judge granting the permission, the adopter, the adopted, and, in a proper case, also by the person who granted permission for the adoption, the notary and two witnesses authenticating it.

1758 par. 2, 1760, 277.

ART. 281. After the instrument of adoption shall have been legally executed, the adopter and the adopted acquire respectively the rights and obligations of father or mother and legitimate children. If the adopted should be under the power of a tutor or curator, he shall be relieved therefrom, and shall come under the paternal power of the adopting father, or under the tutorship or curatorship of the adopting mother, in a proper case.

250, 251, 253, 256 to 258, 261, 411 Nos. 7 and 8, 262 to 264, 117 par. 2, 61 No. 4, 140 No. 11, 288, 291, 295, 296, 298. *et seq.*, 278, 282, 283, 286, 287 par. 2.

ART. 282. The adopted child may inherit from the father by testament, in the event that there be no legitimate ascendants, and if there be such he shall be entitled only to one-tenth of the property; but the adopter can in no case be the heir of the adopted.

272, 287 par. 2, 1240.

ART. 283. The adopting father and mother may appoint a tutor or curator by testament or by an act *inter vivos* to the adopted, in accordance with the provisions of article 450.

ART. 284. The adoption cannot be revoked without cause. Causes for the revocation of the adoption are the same as those which serve as a basis for the disinheritance of a forced heir.

1265 *et seq.*

ART. 285. If the person adopted should not agree as to the correctness of the cause upon which the revocation of the adoption is based, such revocation shall not be valid if the cause be not proved judicially.

ART. 286. The adoption having been validly revoked, the person and the property of the individual adopted shall return to the power or guardianship of the person upon whom the former depended before the adoption, if said adopted person should not have the free administration of his property.

ART. 287. The adoption ceases by the death of the adopter or of the adopted.

It also ceases by the fact of the adopting father or mother having legitimate descendants.

272.

TITLE XIV.

Of Paternal Power.

ART. 288. Paternal power is the aggregate of rights which the law gives a legitimate father over his non-emancipated children.

These rights do not belong to the mother.

Children of any age, not emancipated, are called *children of the family*, and the father with relation to them, *father of the family* (*pater familias*).

250, 253, 258, 262, *et seq.* 53 of law 153 of 1887.

ART. 289. Legitimation puts an end to the guardianship under which the legitimated person was, and gives the father making the legitimation paternal power over a minor under twenty-one years of age, not qualified as to age.

236.

ART. 290. The paternal power does not extend to the child who discharges a public office or trust, in the acts which he executes by reason of his office or trust. Public employees, under age, are considered as of legal age in what concerns their offices.

294, 1504, par. 3.

ART. 291. A father enjoys the usufruct of all the property of a son of the family, excepting the following:

1. The property acquired by the son in the exercise of any employment, of any liberal profession, of any industry, of any mechanical trade.
2. The property acquired by the son as a donation, inheritance, or legacy, when the donor or testator shall have expressly stipulated that the son and not the father should have the usufruct of such property.

316, 296, 442.

3. The inheritances or legacies which may have passed to the son by reason of the incapacity or unworthiness of the father, or by reason of the latter having been disinherited.

The property included under No. 1 forms the *professional* or *industrial peculium* of the son; that in which the son has the ownership and the father the right of usufruct, forms the *ordinary adventitious peculium*; that comprised under Nos. 2 and 3, the *special adventitious peculium*.

The *legal usufruct* of the father of a family is that granted him by law.

292, 294, 2489 par. 3, 2502 No. 4.

ART. 292. The father enjoys the legal usufruct only until the emancipation of the child.

312.

ART. 293. The father of the family is not obliged, by reason of the legal usufruct, to give the bond or security that usufructuaries generally must give for the preservation and restitution of the thing subject to the usufruct.

834.

ART. 294. The son of the family shall be considered as emancipated and qualified as to age for the administration and enjoyment of his professional or industrial peculium.

312, 339, 290, 301, 303, 432, 1504, par. 3.

ART. 295. The father administers the property of the son, in which the law grants him the usufruct.

He does not have this administration in the things donated, inherited or bequeathed under the condition that the father shall not administer them.

Nor in the inheritances or legacies which may have passed to the son by reason of the incapacity or unworthiness of the father, or on account of the latter having been disinherited.

291, 316, 296, 442, 434, 1637.

ART. 296. The condition that the father shall not administer, imposed by the donor or testator, is not understood to deprive him of the usufruct, nor is it understood that the deprivation of the usufruct takes the administration from him, unless either be stipulated by the donor or testator.

291 par. 2, 295, 316, 442.

ART. 297. The father of the family, who, as such, administers property belonging to the son, is not obliged to prepare a formal inventory thereof, as long as he does not contract a new marriage; but if he does not make a formal inventory he must keep a detailed description of said property from the time he begins the administration thereof.

ART. 298. The father of a family is liable, in the administration of the property of the child, to the extent of a slight fault.

The liability of the father towards the child extends to the property and its fruits, in such property of the son in which he enjoys the administration but not the usufruct; and is limited to the property in which he is administrator and usufructuary.

63, pars. 3 and 4, 1604 par. 1.

ART. 299. There shall be a right to relieve the father of a family of the administration of the property of the son, if he shall have been guilty of fraud or habitual grave negligence.

The father shall lose the administration of the property of the child whenever the paternal power is suspended by judicial decree.

63 par. 2, 310, 311, 315, 438, 447, 456 par. 2.

ART. 300. If the father should not have the administration of all or part of the ordinary or special adventitious *peculium*, the child shall be given a curator for such administration.

But if the father should be relieved of the administration of that property of the son in which the law gives him the usufruct, he shall not thereby cease to be entitled to the net fruits, after deducting the cost of administration.

434, 438 par. 2, 296.

ART. 301. The acts and contracts of a son not authorized by the father, or by the adjoined curator in the case of the preceding article, shall obligate exclusively his professional or industrial *peculium*.

But he cannot take money on interest, nor purchase on time (excepting in the ordinary affairs connected with said *peculium*) without the written authority of the father. And should he do so, he shall not be bound by these contracts, except to the extent of the benefit he may have derived therefrom.

261, 294, 1504 par. 3, 2262, 183, 1767, 192, 1776 par. 2.

ART. 302. The acts and contracts which the son of a family may enter into outside of his professional or industrial *peculium*, and which the father shall authorize or ratify in writing, bind the father directly and the son subsidiarily, to the extent of the benefit which the latter may have derived from said acts or contracts.

187, 1767.

ART. 303. The real property of the son, even though belonging to his professional *peculium*, cannot be alienated nor mortgaged without the authority of the judge, after an investigation as to the necessity therefor.

483, 189, 1810.

ART. 304. The father cannot donate any portion of the property of the son, nor give it in lease for long terms, nor accept or repudiate an inheritance deferred to the son, except in the form and with the limitations imposed upon tutors and curators.

491, 492, 496, 486, 487, 1813, 1307 par. 2.

ART. 305. Whenever the son of the family shall be obliged to litigate as a complainant against his father, it shall be necessary for him to obtain the consent of the judge, and the latter, in granting it, shall appoint a curator *ad litem*.

435, 583.

ART. 306. The son of a family cannot appear in court, as plaintiff or complainant against a third person, unless he be authorized or represented by the father.

If the father of a family shall deny his consent to the son for the civil action which the son desires to bring against a third person, or if he be disqualified from giving it, the judge may supply it, and in doing so shall appoint a curator *ad litem* for the son.

435, 583, 181, 188.

ART. 307. In the civil actions against the son of a family, the plaintiff must address himself to the father, in order that he may authorize or represent the son in the litigation.

If the father were unable or unwilling to give his authority or to represent the son, the judge may supply it and appoint a curator *ad litem* for the son.

ART. 308. The paternal intervention shall not be necessary to proceed criminally against the son; but the father shall be obliged to furnish him the assistance he may require for his defense.

181.

ART. 309. The son of a family does not require the paternal authority to dispose of his property by a testamentary act which is to be effective after his death.

184, 1061, last par.

ART. 310. The paternal power is suspended by the prolonged loss of reason of the father, by the father being interdicted from administering his own property, and by the long absence of the father, entailing grave damage to the interests of the son, which the absent father does not provide for.

119, 311, 312.

ART. 311. The suspension of the paternal power must be decreed by the judge after an investigation of the matter, and after the relatives of the son and the defender of minors have been heard.

315, 61, 456. par. 2.

TITLE XV.

Of Emancipation.

ART. 312. *Emancipation* is an act which puts an end to the paternal power. It may be voluntary, legal, or judicial.

ART. 313. *Voluntary* emancipation is effected by a public instrument, in which the father declares that he emancipates the adult son and the son consents thereto.

An emancipation shall not be valid if it be not authorized by the judge after an investigation of the matter.

1758, 1760.

ART. 314. *Legal* emancipation takes place—

1. By the natural death of the father.*
2. By the marriage of the son.
3. By the son having reached the age of twenty-one years.
4. By a decree which gives the possession of the property of the father who has disappeared.

341, 99, 100.

ART. 315. *Judicial* emancipation is effected by a decree of a judge:

1. When the father habitually mistreats the son, to the extent of endangering his life or causing him serious injury.

262.

2. When the father has abandoned the son.

266.

3. When the depravity of the father renders him incapable of exercising the paternal power.

4. When by a judicial decision, which has become *res judicata*, the father has been convicted of a crime to which is affixed the penalty of four years of *reclusión*, or another equal or greater penalty.

586, No. 9.

In the four preceding cases the judge may proceed on the petition of any relative by consanguinity of the son, and even *ex proprio motu*.

* Art. 266, No. 1, of the Code of Chile says: "By the *natural* or *civil* death of the father, and by the *civil* death of the son."

The emancipation shall take place notwithstanding any pardon which may be granted, unless in the pardon the preservation of the paternal power shall be expressly included.

310, 311, 265, 266, 267, 438, 447.

ART. 316. When a donation is made to the son, or he is left an inheritance or legacy under the condition of obtaining his emancipation, the father shall not have the usufruct of such property, and the condition shall thus be understood to have been complied with.

Nor shall he have the administration of such property if the donor or testator should so expressly stipulate.

291 No. 2, 292, 296, 442.

ART. 317. Any emancipation, after it has taken place, is irrevocable, even by reason of ingratitude.

TITLE XVI.**Of Natural Children.**

(This Title has been expressly repealed by art. 65 of law 153 of 1887, and substituted by paragraphs 4 and 6 *Of Persons*, Second Part of said law.)

TITLE XVII.**Of the Obligations and Rights of Parents and Natural Children.**

(This Title has also been expressly repealed by art. 65 of law 153 of 1887, and substituted by par. 5 *Of Persons*, Second Part of said law.)

TITLE XVIII.**Of Disputed Maternity.**

ART. 335. *Maternity*, that is, the fact of a woman being the real mother of a child which passes as her own, may be impugned, by proving false birth, or the substitution of the pretended child for the real one. The following have the right to impugn it:

1. The husband of the alleged mother and the alleged mother herself, to not recognize the legitimacy of the child.
2. The real legitimate father and mother of the child, to confer upon him, or upon his legitimate descendants, family rights in their own.
3. The real mother to demand support of her child.

ART. 336. The persons mentioned in the preceding article cannot impugn the maternity after the expiration of ten years, reckoned from the date of the birth.

Nevertheless, in the event of some fact unexpectedly coming to light which is incompatible with the putative maternity, the right of action may subsist or be renewed for a period of two years counted from the date of the proved revelation of the fact.

217 *et seq.*

ART. 337. This right of action shall also be granted to any other person actually prejudiced by the putative maternity in his rights to the testamentary or intestate succession, of the alleged father or mother.

This right of action shall expire sixty days from the date upon which the complainant shall have heard of the death of said father or mother.

After the expiration of two years ignorance of the death cannot be pleaded.

219 *et seq.*

ART. 338. No one who shall have had part in the fraud of fictitious birth or substitution, shall be benefited in any manner by the discovery of the fraud, not even to exercise the rights of paternal power over the child, or to demand support of him, or to succeed to his property by reason of his death.

418, 1515 par. 2, 2343 par. 2.

TITLE XIX.

Of Qualification as to Age.

ART. 339. The *qualification as to age* is a privilege granted to a minor in order that he may execute all the acts and contract all the obligations of which persons over twenty-one years of age are capable, excepting such acts or obligations for which he is expressly declared incapable by a law.

289, 525, 34 par. 2, 344, 345, 588, 1329, 1777.

ART. 340. Married males, who shall have attained the age of eighteen years, obtain qualification as to age by operation of law.

In the other cases the qualification as to age is granted by the competent judge, on the petition of the minor.

ART. 341. Qualification as to age cannot be obtained from a judge by women living under the marital power, even though they should be separate in property; nor by children of a family; nor by persons under eighteen years of age, even though they shall have been emancipated.

288, par. 3.

ART. 342. The judge cannot grant the qualification as to age without having heard thereon the relatives of the minor requesting it, his curator and the defender of minors.

61.

ART. 343. The qualification as to age puts an end to the guardianship of the minor.

432.

ART. 344. This qualification does not extend to political rights.

34, par. 2.

ART. 345. A minor who has been qualified as to age cannot alienate or mortgage his real property, nor approve the accounts of his tutor or curator, without judicial authorization; nor shall such authority be granted without an investigation into the matter.

The alienation of such real property, authorized by the judge, shall take place at a public sale.

34 par. 2, 483 *et seq.*, 1777, 1810.

TITLE XX.

Of Proofs of the Civil Status.

CHAPTER I.

Preliminary Provisions.

ART. 346. *Civil status* is the quality of an individual in so far as it qualifies him to exercise certain rights and contract certain civil obligations.

20 of law 153 of 1887.

ART. 347. Such quality must appear in the register of civil status, the records upon which shall be evidence of the respective status.

367, 407. 22 of law 57 of 1887. 79 of law 153 of 1887.

ART. 348. Notaries public in the States and in the Territories, or the officials called upon to take their places, are charged with the keeping of the civil status of persons.*

What is said in this Title regarding notaries, applies to those who must discharge their functions in the Territories.

ART. 349. The following entries shall be made in said register:

1. Births.
2. Deaths.
3. Marriages.
4. The acknowledgment of natural children.
5. Adoptions.

CHAPTER 2.

Register of Births.

ART. 350. In the Territories every father of a family in whose house a birth occurs is obliged to inform the proper notary or corregidor thereof not later than eight days following that of the birth of the person.

352, 385, 386, 387, 354, 355, 372.

ART. 351. He must state to the notary, in the presence of two wit-

* Undoubtedly this should be “. . . charged with the keeping of the register of the civil status.”

nesses: 1. On what day the birth occurred; 2. The sex and the name of the new born; 3. Who is the mother and her civil status, if the mother can appear; 4. Who is the father, if he be known or can appear, and also who are the grandparents, paternal as well as maternal.

ART. 352. The person in whose house a new born child is abandoned, is obliged to comply, in so far as possible, with the provisions of the preceding articles.

385, 386.

ART. 353. The notary shall draw up the record of birth, shall read it to the persons interested and to the witnesses, and all of them shall subscribe thereto. The notary shall issue a certificate of said record free of charge, if requested so to do.

374, 380.

ART. 354. The death of a new-born child before the declaration of birth, does not operate as an exemption from the obligation of having the proper records made upon the registers of birth and of death.

ART. 355. If the birth occurs upon a voyage or in a place where the mother does not have her domicile, after the record of birth shall have been made, the notary making it must transmit a copy to the proper prefect or corregidor, in order that through him it may be sent to the notary of the domicile of the mother, so that it may be copied upon the register of births and the record transmitted filed.

382.

CHAPTER 3.

Register of Deaths.

ART. 356. In the Territories the father of a family in whose house a person may die shall communicate the death to the notary within thirty days.

358 *et seq.*, 385, 386, 387.

ART. 357. The notary shall enter upon the proper register in the presence of two witnesses a record in which shall be stated: 1. The name and surname of the deceased; 2. The day and hour when the death may have occurred, and whether it was natural or violent; 3. The age, the domicile and the status of the deceased, stating the name of the spouse, if married; 4. The name and surname of the father and of the mother of the deceased, if known; 5. If he left a testament or not, how and before whom drawn.

The relatives or neighbors, or the persons concerning (*que conciernan*) to the deceased shall appear as witnesses in preference to others.*

372, 374.

ART. 358. Any person finding a corpse outside of a dwelling or in a house which has no occupants or neighbors, is under the obligation of giving the notice referred to in article 356, either to the notary, judge-notary, or to any police agent, in order that it may be transmitted to the respective notary.

385, 386, 387.

ART. 359. In the event of the death of any person, in any community, hospital, barracks, prison, or in any other similar institution, notice shall be given thereof to the notary, in order that the record of death may be entered by the Chief, Director, or Administrator of the institution.

ART. 360. In the event of death upon a vessel which navigates in waters belonging to the Union, it shall be the obligation of the person in command of the vessel to give notice thereof to the political authority of the first port of the Union at which the vessel touches, in order that said political authority may direct the Registrar in the place of the residence of such authority, to enter the record of death upon the corresponding register.

385, 386, 387, 382.

ART. 361. With regard to those dying in the field or in any battle or engagement, it is the obligation of the commanding general, line or field officer, or of any one having the command of the troops, if the chief, commander, or officer should be in the service of the Union, to give notice to the respective notary of the deaths occurring among the forces which any of them command, in order that said official may make the proper entries upon the register of deaths.

ART. 362. The notaries and prefects or corregidores-notaries, shall give the persons interested a statement showing that the record of death in question has been made, in order that they may present them to the director or porter of the cemetery where the body is to be interred.

363.

ART. 363. In no cemetery, whether public or private, shall a body be given sepulture without the statement referred to in the preceding article having been presented to the gatekeeper or gravedigger.

* The corresponding article of the Code of Cundinamarca, 382, states: ". . . or the persons acquainted (*que conocieran*) with the deceased."

Persons violating this provision shall be punished by the proper corregidor or prefect by the imposition of fines from one to ten pesos, or confinement from one to three days.

CHAPTER 4.

Register of Marriages.

ART 364. The corregidor in the Territories before whom a marriage is celebrated is obliged to transmit to the respective notary the papers drawn up for the celebration of the contract, and the notary, before filing them in his protocol, as prescribed in article 137 of this Code, shall make the proper record upon the register of births, stating:

1. The date of the contract.
2. The name of the official who authorized it.
3. Those of the contracting parties, their places of residence, age; and
4. The names of witnesses who were present thereat. This entry shall be signed by the notary only.

If the corregidor acts in the stead of the notary, the record of the marriage shall be entered upon the register in his office, and the papers shall be filed in the protocol.

372, 374, 367.

ART. 365. The certificates of marriages celebrated by Colombians in any of the States of the Union, or in a foreign country, shall be copied in full upon the Register, and shall be authorized by the signature of the notary, those of the contracting parties and two witnesses.

372, 374, 382.

ART. 366. Whenever a marriage of persons is celebrated who before or at the time of marrying may have acknowledged a child, a marginal note of the legitimation of the child shall be made opposite the record of his birth; but the absence of this requisite cannot be opposed against his quality of legitimation.

407, 408 par. 2, 369, 375.

ART. 367. When the legal celebration of a marriage should result from a civil or criminal proceeding, and it should not be entered upon the register, or if so, the entry is inexact, a copy of the final decision shall be entered thereupon which shall serve as proof of the marriage.

370, 407, 375.

CHAPTER 5.

Register of the Acknowledgment of Natural Children.

ART. 368. When a father shall acknowledge a natural child in the record of birth, it shall be sufficient that he sign the respective record, as evidence of the acknowledgment.

52 par. 2, 318, 1758, 1760. 7 of law 57 of 1887. 56 and 58, No. 5, of law 153 of 1887.

ART. 369. The notary or corregidor before whom an instrument acknowledging a natural child is drawn, shall make and sign an entry upon the register stating: the date of the instrument, the names of the parties thereto, that of the child acknowledged, his age, his place of birth and the name of the attesting witnesses to the instrument.

In the margin of the record of the birth of the child acknowledged a note shall be made citing the instrument of acknowledgment.

If the birth shall have been recorded in another notarial office or corregimiento, the notary authenticating the acknowledgment shall give notice thereof to the one where the birth is registered, in order that the note referred to in the preceding paragraph may be made.

372, 374, 375, 366, 407, 408, par. 2.

ART. 370. If the acknowledgment should be made by virtue of a judicial proceedings, the prefect taking cognizance of the matter shall advise the respective notary in order that he may make the record upon the register.

319, 367, 407. 21 of law 57 of 1887. 55 and 66 of law 153 of 1887.

CHAPTER 6.

Register of Adoptions.

ART. 371. The notary before whom an instrument of adoption may be executed shall make and sign a record thereof upon the register, in the same terms as established, for a case of acknowledgment, in article 369.

372, 374.

CHAPTER 7.

General Provisions.

ART. 372. Records upon the register of civil status shall be made the same day that the notice is given or information is received of the event;

the entries shall be made one after the other, without leaving any blank spaces between the same, without abbreviations or figures, and without inserting anything not pertinent thereto.

ART. 373. At the beginning of each entry in the register there shall be placed, in large letters, the name and surname of the new born, deceased, contracting party or legitimated child, as the case may be.

ART. 374. The entry having been made upon the register, the notary shall read it to the persons interested or to their representatives and to the witnesses; any errors which may have been made shall be corrected at the foot, and thereupon all shall subscribe thereto.

407, 353, 364 No. 4, 365, 369.

ART. 375. When a new record is made which bears a relation to another, it shall be made upon the day of the date of the new entry, and not in the margin of the former one.

366, 367, 369 pars. 2 and 3, 381, 407, 408, par. 2.

ART. 376. At the end of each book such number of pages shall be set aside as are deemed sufficient to form an alphabetical index of the names of the persons to whom the entries in each register refer, with a reference to the page upon which they appear. This index shall be kept simultaneously with the register.

ART. 377. When it shall be desired to register a birth or a death which has occurred a year before, it is necessary that the persons interested establish the fact by two witnesses, who shall affirm it before the notary, under oath, and that they give exact information of the date, or at least of the month and year when it occurred.

381, 395.

ART. 378. At the end of every month a memorandum shall be made in the respective registers, of the number of entries made. This memorandum shall be subscribed by the respective prefect and notary.

388, 389.

ART. 379. Powers of attorney and other documents which must be attached to the certificates, shall be signed by the notary and the witnesses, and shall be filed together with the registers.

ART. 380. Any person may request certificates of said entries, upon the payment of twenty cents as the only charge.

353, 362, 363.

ART. 381. In the event of any entry having been omitted from the registers, the evidence submitted thereon shall be admitted, and upon being declared sufficient by the judge, the omission shall be repaired by making the entry in the place corresponding to the date on which it is made, and making a reference in the margin of the place where it was omitted.

377, 395, 375.

ART. 382. Records of the registry of civil status, made in another State of the Union, or in a foreign country, are valid if the formalities required in the State or country where they were made were observed, or if they were made in accordance with the provisions of the Civil Code, before a diplomatic or consular agent of the Union. †

355, 360, 365.

ART. 383. All the registers of the civil status of persons shall be kept in the offices of the notaries, for which purpose the prefects or corregidores shall transnit in the month of January those they may have formed in and have under their charge from the preceding year.

The notaries, judges, or corregidores are responsible for any alterations in the said registers.

378, 384, 389, 390, 391.

ART. 384. Any alteration or falsification of the records of civil status, any record thereof made upon a loose sheet, or in any other manner not upon the registers provided for this purpose, entitles the persons interested to demand compensation for the loss and damage they may suffer, without prejudice to the penalty which the Penal Code affixes to the crime of falsity.

378, 383, 388, 389.

ART. 385. In addition to the persons mentioned in articles 350, 352, 356, 358, 359, 360, and 361, the immediate relatives of the new born, or of the deceased in a proper case, the midwives, the ministers, sacristans, sextons, and other persons who, by reason of their occupation or profession, may have had knowledge of the birth or death of a person, are also obliged to give the notice prescribed in said articles.

ART. 386. Police agents who shall in any manner receive information of the birth or death of a person in the district or section in which they perform their duties, are obliged to give the notice indicated to the respective notary, or to the prefect or corregidor, either in person, or see that it be given by the person that should do so.

ART. 387. When the notary shall be absent from the seat of the district of the prefect or corregidor, in the discharge of the duties of his office, the notice referred to in the two preceding articles shall be given to the prefect or corregidor; who shall order the sepulture, if a death be in question, and take the proper memoranda in the case, and transmit them to the notary upon his return, in order that the latter may make the proper entry upon the respective register.

ART. 388. The prefect or corregidor shall see to it that the registers of births and deaths are kept faithfully and properly, having the power for such purpose to compel the persons or public employees obliged to give the notices referred to in the preceding articles, by the imposition of fines from one to ten pesos, or imprisonment not to exceed three days, to comply with the duty prescribed.

378, 384.

ART. 389. The registers of the civil status of persons must be folioed and rubricated on each sheet by the prefect, who shall in addition place at the beginning thereof a note of the number of sheets each contains, authorized by his signature.

378, 384, 383.

ART. 390. During the first six days of each month, the notaries and judge-notaries shall transmit to the prefect a statement showing the number of births, deaths, marriages, and persons legitimated, recorded upon the registers of the civil status, during the preceding month, stating *so many* males, *so many* females.

391.

ART. 391. During the month of January of each year the prefects or corregidores shall prepare and transmit to the Department of the Interior and Foreign Affairs, for publication in the "Diario Oficial," a statement showing the movement of the population in each one of the Territories during the year immediately preceding, in accordance with the data they should have received, according to the provisions of the preceding article.

ART. 392. The authenticity and correctness of the aforementioned documents shall be presumed, if in proper form.

66, pars. 2 and 3.

ART. 393. The aforementioned documents may be rejected, even though it is evident that they are authentic and have no corrections or erasures, by proving the lack of personal identity, that is, the fact

that the person to whom the document refers and the person to whom it is intended to apply, are not one and the same person.

ART. 394. The aforementioned documents are evidence of the declarations made by the parties contracting marriage, by the parents or other persons in the respective cases; but they do not guarantee the veracity of such declaration in any of its parts.

They may, therefore, be impugned, by proving that the declaration in the point in question was false.

342 par. 2, 1759. 75, par. 2, of law 153 of 1887.

ART. 395. The want of the documents referred to may be supplied in a necessary case by other authentic documents, by depositions of witnesses who may have been present at the acts from which the civil status in question resulted, and in the absence of such proof, by the well known possession (*notoria posesión*) of such civil status.

377, 381, 1758.

ART. 396. The well known possession of the state of marriage consists, principally, in the supposed spouses having treated each other as husband and wife in their social domestic relations; and in the wife having been received in such character by the relatives, connections and friends of the husband, and by the residents of her domicile in general.

ART. 397. The well known possession of the status of a legitimate child consists in his parents having treated him as such, providing for his education and establishment in a suitable manner, and presenting him as such to their relatives and friends; and in that the latter and the residents of his domicile, in general, shall have reputed and recognized him as the legitimate son of such parents.

ART. 398. In order that the well known possession of the civil status be received as proof of the civil status, it is necessary that it shall have lasted at least ten years.

336.

ART. 399. The well known possession of a civil status shall be proved by a number of trustworthy witnesses who establish it in an incontrovertible manner; especially in the event that the absence of the respective certificate, or the loss or misplacement of the register in which the record should appear, is not explained and proved in a satisfactory manner.

ART. 400. When it shall be necessary to specify the age of a person, for the execution of acts or the discharge of duties which require a certain age, and it should not be possible to do so by documents or testimony fixing the period of his birth, an age between the greatest and

lowest appearing compatible with the physical development and aspect of the individual shall be given him.

The Prefect or Corregidor, in order to establish the age, shall hear the opinion of physicians or other qualified persons.

ART. 401. The judicial decision declaring the legitimacy of a child true or false is valid not only with regard to the persons who have participated in the proceedings, but with regard to all persons, with relation to the effects such legitimacy carries with it.

The same rule must be applied to the decision which declares a disputed maternity to be true or false.

17, 404, 406.

ART. 402. In order that the decisions referred to in the preceding article may produce the effects designated therein, it is necessary—

1. That they partake of the nature of *res judicata*.
2. That they have been rendered against a legitimate contradicter.
3. That there has been no collusion in the proceedings.

406, 403, 405.

ART. 403. A legitimate contradicter in the question of paternity is the father against the son, or the son against the father, and in the question of maternity the son against the mother, or the mother against the son.

Whenever the paternity of a legitimate son is involved in the question, the father must take part in the proceedings, under the penalty of nullity.

ART. 404. The heirs represent the legitimate contradicter who may have died before the decision; and the decision rendered in favor or against any of them benefits or prejudices the co-heirs, who, though cited, should not appear.

401.

ART. 405. Evidence of collusion in the proceedings is not admissible if not presented within five years after the decision.

ART. 406. No prescription or decision whatsoever, between whosoever it may have been pronounced, may be opposed against the person presenting himself or herself as the true father or mother of one who passes as the son of others, or as the true son of the father or mother who does not acknowledge him.

17, 401.

ART. 407. When in a record some mistake or error shall have been committed to which attention was not called as prescribed in article 374, an application shall be made to the judge, in order that, with a hearing of the persons interested, the mistake or error be corrected. If a favorable

decision should be rendered, it shall be inserted in the respective place of the register, taking into consideration the date of the insertion, which shall serve as a record, a note being placed in addition in the margin of the amended entry. The certification shall prejudice only the parties who may have been heard in the proceedings.

367, 375, 401.

ART. 408. The Notary before whom an instrument legitimating a child is drawn up, in accordance with the Civil Code, shall make an entry upon the register of legitimations, stating: the date of the instrument, names of the parties thereto, name of the legitimated child, his age and place of birth, and the names of the attesting witnesses to the instrument.

In the margin of the record of birth of the legitimated child a note shall be made citing the instrument of legitimation.

If the birth of the legitimated child should be on record in a notarial office other than that in which the legitimation took place, the notary authorizing the latter shall communicate it to the one where the birth is registered, in order that such record may be made in the terms of the preceding paragraph.

366, 369, 375.

ART. 409. If in order to establish facts relating to the civil status of persons, prior to September 1, 1853, it should be necessary to have copies of the records of birth or baptism, death or marriage entered in the books which were kept for the purpose by the ministers of the Catholic faith, before that date, the Prefects may, at the petition of a party, order that such books be produced for the purpose of comparing the certificate or copy requested, availing themselves, with this end in view, of legal compulsory process.

22 of law 57 of 1887. 79 of law 153 of 1887.

ART. 410. The register of the civil status shall be kept in accordance with the forms inserted at the end of this Code. 

TITLE XXI.

Support Due by Law to Certain Persons.

ART. 411. Support is due:

1. The spouse.
2. The legitimate descendants.
3. The legitimate ascendants.
4. A woman divorced who did not give cause therefor
5. The natural children and their legitimate posterity.
6. The natural parents.
7. The adoptive children.
8. The adopting parents.
9. The legitimate brothers and sisters.
10. The person who made a large and valuable donation if it shall not have been rescinded or revoked.

The action of the donor shall be directed against the donee.

Support is not due to the persons herein mentioned, in the cases in which a law denies it to them.

1016, No. 4. 1226, No. 1. 1227, *et seq.*, 166, 224, 233, 251, 252, 253, 260, 334, 1796, No. 5. 21 of law 57 of 1887. 62, 66, 71 *et seq.*, of law 153 of 1887.

ART. 412. The general rules to which the furnishing of support is subject, are the following; without prejudice to the special provisions which this Code contains with respect to certain persons.

ART. 413. Support is divided into congruous and necessary.

Congruous support is that which enables the beneficiary to live modestly in a manner in correspondence with his social position.

Necessary support is that which is sufficient to sustain life.

Support, whether congruous or necessary, comprises the obligation of providing the beneficiary under twenty-one years of age with primary education and instruction in some profession or trade.

334, par. 2. 62, par. 2, of law 153 of 1887.

ART. 414. The persons designated in numbers 1, 2, 3, 4, and 10 of article 411 are entitled to congruous support, excepting in the cases in which such support is expressly limited by law to what may be necessary for subsistence; and generally in the cases in which the person receiving support shall have been guilty of a grave injury against the person who owed him support.

Congruous support is also due in the case of article 330.

In the case of an atrocious injury, the obligation to give support shall cease entirely.

For the purposes of this article, atrocious injuries are grave crimes and those light crimes which consist of an assault upon the person furnishing the means of support. Grave injuries are other light crimes against any of the individual rights of the person owing support.

1036, 1025, 1268, 1266.

ART. 415. Those incapable of exercising the right of ownership are not so to receive support.

ART. 416. He who has a right to claim support from more than one of the persons mentioned in the subdivisions of article 411, may avail himself of one of said rights only, in the following order of preference:

In the first place, if there is a right under subdivision 10.

In the second, under subdivisions 1 and 4.

In the third, under subdivisions 2 and 5.

In the fourth, under subdivisions 3 and 6.

In the fifth, under subdivisions 7 and 8.

There shall be no right under subdivision 9, except in the absence of all the others.

Among a number of ascendants or descendants application must be made to the nearest relatives.

Only in the event of the insufficiency of the preferred right may recourse be had to another.

ART. 417. While the obligation to furnish support is being considered, the judge or prefect may order that it be given provisionally, when in the proceedings a plausible reason therefor is apparent, without prejudice to the restitution, if a decision be rendered in favor of the person of whom support was claimed.

This right of restitution shall cease when the plaintiff shall have brought his action in good faith and with a plausible ground therefor.

224, 233, 964, par. 3.

ART. 418. In the event of fraud for the purpose of obtaining support, all those who may have participated in said fraud shall be bound *in solido* to make restitution and compensation for damages.

233, 1515 par. 2, 2343.

ART. 419. In fixing the amount of the support, the financial condition of the debtor and his domestic circumstances must always be considered.

179, 1192, 1796 No. 5, par. 2.

ART. 420. Congruous or necessary support is due only to the extent of making up the means of subsistence of the beneficiary to live in a style in accord with his social position or to sustain life.

ART. 421. Support is due from the date of the first suit brought, and shall be paid by months in advance.

The restitution cannot be demanded of that portion of advance payments which may not have been due the beneficiary by reason of his death.

1418, par. 2. 76 of law 153 of 1887.

ART. 422. Support due under the law is understood to be granted for the entire life of the beneficiary, provided that the conditions which gave legal grounds for the suit therefor continue.

Nevertheless, no male to whom necessary support only is due can demand it after having attained the age of twenty-one years, unless on account of some corporal or mental disability he is unable to live from his work; but if he should subsequently become disabled, the obligation to support him shall be renewed.

1192, par. 2. 72 of law 153 of 1887.

ART. 423. The judge shall fix the form and amount of the support, and may decree that it consist of the interest on a sum deposited for the purpose in a savings institution or other similar establishment, to be returned to the supporter or his heirs when the obligation ceases.

ART. 424. The right to demand support cannot be transferred by reason of death, nor sold or conveyed in any manner whatsoever, nor renounced.

15, 2474.

ART. 425. He who owes support cannot oppose to the claimant in compensation what the latter may owe him.

1721, par. 2, 1677, No. 1, 2474.

ART. 426. Notwithstanding the provisions of the two preceding articles, pensions for support in arrears may be renounced or set off, and the right to sue therefor may be transferred *mortis causa*, sold and assigned, without prejudice to the prescription in favor of the debtor.

ART. 427. The provisions of this Title do not apply with regard to allowances for support made voluntarily in a testament or by a donation *inter vivos*, with regard to which the will of the testator or donor must be considered, in so far as he may have been able to dispose freely of his property.

1192, 1418, 1459, 1242.

TITLE XXII.

Of Tutorships and Curatorships in General.

CHAPTER I.

Definitions and Rules in General.

ART. 428. *Tutorships* and *curatorships* are trusts imposed upon certain persons in favor of those who cannot care for themselves, or properly administer their affairs, and not under the power of a father or husband who can give them the proper protection.

The persons discharging these trusts are called *tutors* or *curators*, and generally *guardians*.

ART. 429. The provisions of this Title and of the two following, are subject to the modifications and exceptions which will be enumerated in the special Titles on tutorship and each kind of curatorship.

ART. 430. Tutorship and general curatorships extend not only to the property but also to the persons of the individuals subject thereto.

481, 2347, par. 3.

ART. 431. Persons who have not attained the age of puberty are subject to tutorship.

480, 1504.

ART. 432. Minors who have not obtained qualification as to age are subject to general curatorship; as well as those who by reason of prodigality or insanity have been interdicted from administering their property, and deaf-mutes who cannot make themselves understood in writing.

193, 294, 340, 343, 480, 1504.

ART. 433. Curators *ad bona* are those appointed to the property of an absentee, vacant inheritances, and the eventual rights of an unborn child.

575, 580.

ART. 434. *Associate curators* (*curadores adjuntos*) are those appointed in certain cases to persons under the paternal or marital power, or under general tutorship or curatorship, in order that they may exercise a separate administration.

581, 582, 440, 295 pars. 2 and 3, 299, 300, 438, 439, 208, 550 No. 1, 627 par. 2.

ART. 435. A *special* curator is one appointed for a special matter.

583.

ART. 436. Individuals subject to tutorship or curatorship are called *wards*.

ART. 437. Two or more persons may be placed under one tutorship or curatorship, provided that their patrimonies are undivided.

If the patrimonies be divided, there are considered as many tutorships or curatorships as there are patrimonies, even though one person should exercise them.

The same tutorship or curatorship may be exercised jointly by two or more tutors or curators.

452.

ART. 438. No tutor or general curator can be appointed for one under paternal power, unless the latter shall have been suspended by a judicial decree in any of the cases enumerated in article 315.

An associate curator shall be assigned a son, when the father is deprived of the administration of the property of the son, or of a part thereof, according to article 299.

118, 119, 120.

ART. 439. No curator can be appointed to a married woman who is not divorced nor separate in property, as long as the husband administers the same.

A curator shall be given a divorced woman in the same cases in which, if she were unmarried, she would require a curator for the administration of her property.

The same rule applies to a woman separate in property with regard to that to which the separation extends.

The curatorship referred to in the preceding paragraphs does not affect the rights retained by the husband of the woman separate in property according to article 204.

208.

ART. 440. Generally no tutor nor curator can be given him who already has such: he may only be given an associate curator, in the cases prescribed by law.

ART. 441. If the tutor or curator, pleading the excessive complication of the affairs of the ward and his inability to administer them properly, should request the appointment of an associate curator, the Judge or Prefect may comply with such request after hearing thereon the relatives of the ward and the respective counsel.

The Judge or Prefect shall then divide the administration in the manner he may deem best.

61, 508.

ART. 442. If a donation be bestowed upon a person under tutorship or curatorship, or if he be left an inheritance or legacy under the strict condition that the property comprised in the donation, inheritance or legacy be administered by a person designated by the donor or testator, the wishes of the latter shall be respected; unless, after having heard the relatives and the respective counsel, it shall appear that it is more convenient for the ward to renounce the donation, inheritance or legacy, than to accept it under those terms.

If the donation, inheritance or legacy be accepted, and the donor or testator should not have designated any person, or the person designated should not be a suitable one, the Judge shall make the appointment.

296, 316 par. 2, 300, 450, 486, 487, 1293, 1307 par. 2, 61.

ART. 443. Tutorships or curatorships may be testamentary, legal or dative.

Testamentary, are those constituted by a testamentary act.

Legal, those conferred by law upon the relatives or spouses of the ward.

Dative, those conferred by the magistrate.

The guardianship conferred by an act *inter vivos*, according to article 450, is subject to the rules governing testamentary tutorships.

CHAPTER 2.

Testamentary Tutorship or Guardianship.

ART. 444. A legitimate father may appoint a tutor, by testament, not only to living children, but also to those still in the maternal womb, in the event that they should be born alive.

574, 447, 448, 450.

ART. 445. He may likewise appoint a curator, by testament, to minor adults who have not been qualified to administer their property; and for adults of any age, who may be in a state of insanity, or deaf mutes, who cannot understand nor make themselves understood in writing.

540, 574.

ART. 446. He may likewise appoint a curator, by testament, for the defense of the eventual rights of the son about to be born.

574.

ART. 447. A father who has been deprived of the paternal power by a judicial decree, according to article 315, or who by reason of bad administration has been judicially removed from the guardianship of the son, shall not enjoy the rights conferred by the preceding articles.

299.

ART. 448. In default of a father, the same rights may be exercised by the mother, provided that she has not been divorced for adultery, or that by reason of her bad conduct she has not been relieved of the personal care of the son, or that she has not contracted a new marriage.

288, 163, 160, 161, 599. 53 of law 153 of 1887.

ART. 449. The natural father or mother may exercise the rights granted by the preceding articles to the legitimate father.

ART. 450. Legitimate or natural parents, notwithstanding the provisions of articles 447 and 448, and any other person, may appoint a tutor or curator, by testament or by an act *inter vivos*, provided they donate to or leave the ward a portion of their property, not due him as a *légitime*.

This guardianship shall be limited to the property donated or left the ward.

283, 434, 438 par. 2, 442, 443.

ART. 451. Two or more tutors or curators to exercise the guardianship simultaneously, may be appointed by testament; and the testator shall have the power to divide the administration among them.

508.

ART. 452. If there should be a number of wards, and the testator should divide them among the tutors or curators appointed, all of the latter shall exercise the tutorship or curatorship conjointly, while the patrimony remains undivided, and upon the division of the patrimony, the guardianship shall be divided among them, and they shall be independent from each other.

But the care of the person of each ward shall be exclusively under the respective tutor or curator, even while the patrimony remains undivided.

437, 508.

ART. 453. If the testator shall appoint a number of tutors or curators to exercise the tutorship or curatorship jointly, and should not divide the functions among them, the Judge or Prefect may, after hearing the relatives of the ward, entrust such duties to one of the appointees or to the number of them which he may consider sufficient, and, in the latter case, divide them as may be best for the security of the interests of the ward.

61, 508, 462.

ART. 454. A number of tutors or curators may likewise be appointed by testament to substitute or succeed each other; and the substitution or succession being established for a special case, it shall be applied to the other cases in which a tutor or curator is lacking, unless it shall manifestly appear that the testator wished to limit the substitution or succession to the case or cases designated.

ART. 455. Tutorships and curatorships are susceptible of suspensive and resolutive conditions and the fixing of a certain day for their commencement or determination.

CHAPTER 3.

Of Legal Tutorship or Curatorship.

ART. 456. Legal guardianship takes place in default or on the termination of testamentary guardianship.

It takes place especially when, the father being living, the minor is emancipated, and when the paternal power is suspended by judicial decree.

ART. 457. Those called to legal tutorship or curatorship, are, in general: In the first place, the father of the ward.

In the second, the mother.

In the third, the legitimate ascendants of either sex.

In the fourth, the brothers of the ward, and the brothers of the ascendants of the ward.

If the tutorship or curatorship of the father or mother should not be available, the Judge or Prefect, after hearing the relatives of the ward, shall select from among the other ascendants, and in the absence of ascendants, from among the collaterals herein designated, the person appearing to him best suited and presenting the best security; and he may also, if he should deem it advisable, select more than one person, and divide the duties among them.

The relationships mentioned in this article are understood to be legitimate.

61, 508, 537 par. 5. 550 par. 7.

ART. 458. The father or mother first acknowledging the natural child, or who is first given this character, is called to the legal guardianship, and if both acknowledge him or are declared at the same time natural parents of the minor, the father is given preference in the guardianship of the latter. Such call shall terminate any other guardianship under which the minor may be, excepting in the event of the incapacity or legitimate excuse of the person who, according to the preceding paragraph, is called upon to discharge it.

537 No. 2, 550 No. 4, 591. 61, par. 2, of law 153 of 1887.

ART. 459. If a legal guardian should cease his duties, and the guardianship is to be continued, he shall be replaced by another of the same character.



CHAPTER 4.

Of Dative Tutorship or Curatorship.

ART. 460. In default of any other tutorship or curatorship, dative guardianship takes place.

ART. 461. If, for any reason whatsoever, the confirmation of a tutorship or curatorship is delayed, or if, during the same, some obstacle should occur preventing the tutor or curator from discharging it any longer or for some time, the Magistrate shall appoint a temporary tutor or curator for the period of the delay or obstacle.

But if there should be another tutor or curator who can supply the absence, or if it be a question of appointing a tutor or curator to succeed the one actually discharging the tutorship or curatorship, and the latter may continue therein for some time, the appointment of a provisional one shall not take place.

588 pars. 2, 3, and 4, 631.

ART. 462. The Magistrate, in selecting a dative tutor or curator, must hear the relatives of the ward; and he may, in a necessary case, appoint two or more, and divide the duties among them, as in the case of art. 453.

If there be an associate curator, the Judge or Prefect may prefer him for the dative tutorship or curatorship.

61, 508.

TITLE XXIII.

Of the Measures and Formalities which must Precede the Exercise of Tutorship or Curatorship.

ART. 463. Every tutorship or curatorship must be confirmed (*discernida*).

Confirmation (*discernimiento*) is the judicial decree authorizing the tutor or curator to enter upon the discharge of his duties.

ART. 464. In order to confirm the tutorship or curatorship it is necessary that the bond or security which the tutor or curator is obliged to furnish be filed.

Nor shall the administration of the property be given him without a formal inventory thereof being first made.

470, 584, 1341.

ART. 465. All tutors or curators are obliged to give bond, excepting only:

1. The spouse, and the legitimate ascendants and descendants.
2. Provisional guardians, called upon to exercise the duties for a short term.
3. Those appointed for a specific matter, without the administration of property.

A tutor or curator of well known probity and having sufficient means to answer therefor, may also be relieved from giving bond, if the ward have little property.

605, 1297 par. 2, 584.

ART. 466. In place of the bond prescribed in the preceding article, a sufficient mortgage may be given.

605, 2363 par. 2.

ART. 467. Acts of the tutor or curator which have not as yet been authorized by the decree of confirmation, are null; but the decree, after having been obtained, shall validate prior acts in which delay would have caused prejudice to the ward.

ART. 468. The tutor or curator is obliged to make an inventory of the property of the ward within ninety days after confirmation, and before taking any part whatsoever in the administration, except in so far as it should be absolutely necessary.

The Judge or Prefect, according to the circumstances, may reduce or extend this period.

Through negligence on the part of the guardian in making the inventory and for any grave fault which may be charged to him, he may be removed from the tutorship or guardianship as suspicious, and may be adjudged to pay all loss or damage resulting therefrom to the ward, in the manner prescribed in article 512.

470, 2196 par. 2, 584, 523, 627.

ART. 469. The testator cannot relieve the tutor or curator from the obligation of making an inventory.

504 par. 2.

ART. 470. If the tutor or curator shall prove that the amount of property is too small to support the expense of preparing the inventory, the Judge or Prefect may, after hearing the relatives of the ward and the guardian of minors (*defensor de menores*), remit the obligation of making a formal inventory of such property and require only a private memorandum over the signatures of the tutor or curator, and of three of the nearest relatives, of legal age, or of other reputable persons, in the absence of the latter.

61.

ART. 471. The inventory must be made before a notary and witnesses, in the form prescribed in the Code of Procedure.

1310, 1312, 1822, 1341.

ART. 472. The inventory shall show all the real property and movables of the person whose estate is being inventoried, particularizing them one by one, or stating collectively those that consist in number, weight or measure, stating the amount and quality; without prejudice to making the explanations necessary to protect the liability of the guardian.

It shall also include the titles of ownership, the public and private instruments, the credits and debts of the ward of which he may have vouchers or information only, the commercial or account books, and, in general, all present objects, excepting such as are known to have no value or utility, or which it may be necessary to destroy for some moral purpose.

ART. 473. If after the inventory shall have been made, property should be found of which there was no information at the time of making it, or under any title new property should accrue to the estate inventoried, a formal inventory shall be made thereof and added to the previous one.

ART. 474. The inventory must comprise even the things which did not belong to the person whose estate is inventoried, if they are found among

those that are; and the liability of the tutor or curator shall extend to both.

1826 par. 2.

ART. 475. The mere assertion made in an inventory that the objects enumerated belong to certain persons, is not proof as to the real ownership thereof.

ART. 476. If the tutor or curator shall plead that things have been embodied in the inventory which did not exist, or the number, weight or measure of those existing has been exaggerated, or that they have been given a substance or quality that they lacked, such an exception shall not benefit him, unless he prove that the error could not have been avoided with proper care on his part, or without scientific examinations or analyses.

1624 par. 2.

ART. 477. A tutor or curator who shall plead that he has, knowingly, included in the inventory things which were not really delivered to him, shall not be heard, even though he offer to prove that he had some purpose in view advantageous to the ward.

ART. 478. Obscure or doubtful passages in the inventory shall be construed in favor of the ward, unless there be evidence to the contrary.

50, 1624, 66 pars. 2 and 3.

ART. 479. A tutor or curator succeeding another, shall receive the property under the previous inventory and make a note thereon of any differences. This shall be done with the same formalities as were observed in making the previous inventory, which shall thus become the inventory of the successor.

TITLE XXIV.

Of the Administration of Tutors and Curators with Regard to the Property.

ART. 480. It is the duty of the tutor or curator to represent or authorize the ward in all judicial or extrajudicial proceedings concerning him and which might impair his rights or impose obligations upon him.

784, 1502, 1504, 1634, 1636, 1637.

ART. 481. The tutor or curator administers the property of the ward and is under the obligation of preserving such property and of keeping it in repair and under cultivation. His liability extends to a slight fault, inclusive.

430, 2502 No. 5, 63, 1604.

ART. 482. If there should be appointed in the testament a person whom the guardian is to consult in the discharge of his duties, he shall not thereby be bound by the decisions of the advisor, nor by acting in accordance therewith, is he relieved from liability.

If it should be expressly ordered in the testament that the guardian act with the concurrence of the advisor, the liability of the former in assenting to the opinion of the latter shall not cease; but should there be disagreement between them, the guardian shall act only with the authority of the Judge or Prefect, who shall grant it after an investigation into the matter.

517 par. 2.

ART. 483. Without a judicial decree, it shall not be legal for the tutor or curator to alienate the real property of the ward, nor encumber it with a mortgage or servitude, nor alienate or pledge valuable personal property or that which has a special value (*valor de afección*); nor can the Judge or Prefect authorize such acts, unless it be for a cause of utility or manifest necessity.

189, 1777, 521, 1810, 749.

ART. 484. The sale of any part of the property of the ward enumerated in the preceding articles, shall take place at a public auction.

Notwithstanding the provisions of article 483, if a decree of execution and attachment against real property of the ward shall have issued previously, a new decree for the sale thereof shall not be necessary.

Nor shall a judicial decree be necessary for the constitution of a mortgage or servitude upon real property which has been conveyed to the ward with the charge of constituting said mortgage or servitude.

ART. 485. The tutor or curator cannot, without a previous judicial decree, proceed to divide the real or hereditary property which the ward possesses with others *pro indiviso*.

If the Judge or Prefect, on the petition of a co-owner or co-heir, shall have decreed the division, a new decree shall not be necessary.

1379.

ART. 486. The tutor or curator cannot repudiate any inheritance deferred to the ward, without a judicial decree rendered after an investigation into the matter, nor accept it without the benefit of inventory.

304, 1282, 1293, 442, 1307 par. 2.

ART. 487. Nor can donations or legacies be repudiated without a judicial decree; and if obligations or charges be imposed upon the ward, they cannot be accepted without the previous appraisement of the things donated or bequeathed.

Articles cited to art. 486.

ART. 488. After the division of an inheritance or of real property which the ward possesses with others *pro indiviso*, shall have been made, a new judicial decree approving and confirming it with a hearing of the respective counsel, shall be necessary in order that it may be effective.

1399.

ART. 489. A decree is also first necessary in order to effect settlements or compromises of rights of the ward, valued at more than one thousand pesos, or involving his real property; and in each case the settlement or the decision of the arbitrator shall be submitted to judicial approval, under the penalty of nullity.

1293, 2470.

ART. 490. Money which has been left or donated a ward for the purchase of real property, cannot be destined to any other object preventing or embarrassing the acquisition thereof; unless with judicial intervention, after an investigation into the matter.

ART. 491. The donation of real property belonging to the ward is forbidden, even though under a judicial decree.

Only under a judicial decree can donations be made in money or other movable property of the ward; and the Judge shall not authorize them

except for a grave cause, such as the assistance of a needy relative by consanguinity, to contribute to an object of public charity, or for a similar purpose; and provided that they be in proportion with the means of the ward, and that the productive capitals be not notably reduced thereby.

Expenditures of little value for purposes of charity, or of licit recreation, are not subject to the foregoing prohibition.

1445, 1449.

ART. 492. The gratuitous remission of a right is subject to the rules governing donations.

1711 to 1713, 1450, 1458.

ART. 493. The ward cannot become bound as surety without a prior judicial decree, which shall authorize such surety only in favor of a spouse, a legitimate or natural ascendant or descendant, and for an urgent and grave reason.

1504.

ART. 494. Debtors of the ward who pay the tutor or curator, are discharged from any further payment.

1634, 1635, 1636, 1637.

ART. 495. The tutor or curator must lend the idle money of the ward out under the best security, at the current market rates of interest.

He may, if he considers it preferable, employ such money in the purchase of real property.

Any omission in this respect on his part shall make him liable for the ceasing income (*lucro cesante*), in so far as it shall appear that the idle funds of the ward could have been invested with manifest profit and without danger.

2172, 2183.

ART. 496. The tutor or curator cannot give in lease any part of the rural property of the ward for more than eight years, nor urban property for more than five, nor for a greater number of years than are lacking for the ward to attain the age of twenty-one.

If he should do so, the lease shall not be binding upon the ward, or upon the person succeeding him in the ownership of the property, as to the period exceeding the limits herein established.

304, 645, 1813.

ART. 497. The tutor or curator shall see that what is owed the ward is paid immediately upon its falling due, and shall proceed against debtors by legal means.

1315, 2183.

ART. 498. The tutor or curator shall take special care to interrupt the prescriptions which may run against the ward.

2530 No. 1, 2532, 2541 par. 2, 2544, 2545.

ART. 499. The tutor or curator may recover from the funds of the ward the advances he may have made for the benefit of the latter, together with the current market rate of interest; but he must be authorized therefor by the other general tutors or curators of the ward, if there be any, or by the Judge or Prefect in substitution.

If the ward should owe him a specific thing, real or movable, under the title of a legacy, trust, or any other, it is necessary that the possession thereof be given the tutor or curator by the other tutors or curators, or by the Judge or Prefect in substitution.

ART. 500. In all acts and contracts executed or entered into by the tutor or curator *on behalf of the ward*, he must state this condition in the said act or contract; under the penalty that if this statement is omitted, the act shall be considered as executed or the contract celebrated on behalf of the ward, if it be advantageous to the latter, and otherwise not.

478, 1624 par. 2.

ART. 501. As a general rule, no act or contract in which the tutor or curator, or his spouse, or any of his legitimate ascendants or descendants or of his natural parents or children, or of his legitimate or natural brothers, or legitimate relatives by consanguinity or affinity up to the fourth degree inclusive, or of his adopting father or mother or adopted child, or of any of his business partners, have an interest directly or indirectly, can be executed or celebrated without the authority of the other general tutors or curators who are not implicated in the same manner, or by the Judge or Prefect in substitution.

But not even in this manner can the tutor or curator purchase real property of the ward, or take it under lease; and this prohibition extends to his spouse and to his legitimate or natural ascendants or descendants, adopting parents or adopted child.

1855, 1856, 2170, 1500, 1351.

ART. 502. If there be a number of general tutors or curators, all of them shall authorize the acts and contracts of the ward jointly; but in matters which, owing to the division of the administration, are under

the special charge of one of said tutors or curators, the intervention or authorization of that one alone shall be sufficient.

It shall be understood that the tutors or curators act jointly, when one of them should do so in the name of the others, by virtue of a formal mandate; but in such case the solidary liability of the others shall subsist.

In the event of disagreement among them, the Prefect shall decide.

508, 2102 par. 2, 1340, 2153.

ART. 503. The tutor or curator shall be entitled to recover the expenses he may have incurred in the discharge of his duties: in the event of a legitimate objection, the Prefect shall have them appraised.

2184 No. 2.

ART. 504. The tutor or curator is obliged to keep a faithful and exact account, and in so far as practicable, with vouchers, of all his administrative acts, day by day; to produce it as soon as he concludes his administration; to restore the property to the person legally entitled thereto; and to pay the balance appearing against him.

This obligation applies to all tutors or curators, including a testamentary one, notwithstanding the fact that the testator shall have relieved him from rendering any account or remitted in advance any balance; and even though the ward have no other property but that of which the succession of the testator consists, and although it be left him under the strict condition of not demanding the account or the balance. Such a condition shall be considered as not written.

2181 pars. 2 and 3, 1319, 469, 505, 506, 507, 511 to 514.

ART. 505. The Judge or Prefect may, *ex proprio motu*, whenever he deems it advisable, order that the tutor or curator, even during his guardianship, produce the accounts of his administration or inform the other tutors or curators of the said ward, or a special curator, whom the Judge or Prefect shall appoint for the purpose, of the balance on hand. Such an order may, for a grave cause verbally qualified by the Judge, be requested by any other tutor or curator of the same ward, or by any of the nearest relatives by consanguinity of the latter, or by his spouse, or by the respective defender.

ART. 506. Upon the expiration of his guardianship, the guardian shall turn over the property as soon as possible; without prejudice to executing in the meantime such acts as would otherwise be delayed to the prejudice of the ward.

ART. 507. If there be several guardians administering jointly, all of them, upon the expiration of their guardianship, shall submit a single

account; but if the administration shall have been divided among them, an account shall be presented for each separate administration.

502, 504, 508, 509, 510.

ART. 508. The liability of tutors and curators administering jointly is solidary; but if the administration be divided among them, whether by the testator, or by an order or with the approval of the Judge or Prefect, each shall be directly liable only for his own acts, and subsidiarily for the acts of the other tutors or curators, in so far as exercising the right granted them by article 505, they shall have been able to prevent the improper administration of the other tutors or curators.

This subsidiary liability extends even to the general tutors or curators who have no administrative duties.

General tutors or curators are subject to a similar subsidiary liability on account of the fraudulent administration of associate curators.

502, 582, 1338.

ART. 509. The subsidiary liability prescribed in the preceding article, does not extend to the tutors or curators who, the administration having been divided by a provision of the testator or with the authority of the Judge or Prefect, administer in different departments.

510.

ART. 510. The liability of the tutors or curators is solidary, when they divide the administration among themselves by private agreement only.

509, 2102, 2153.

ART. 511. The account having been submitted by the tutor or curator, it shall be examined by the person to whom the administration of the property may pass.

If the administration is transferred to another tutor or curator, or to the ward himself when qualified as to age, the account shall not be closed unless judicially approved, after having heard the respective defender.

504.

ART. 512. Against a tutor or curator who does not give a true account of his administration, exhibiting at the same time the inventory and producing the balance on hand, or who shall have been convicted during his administration of fraud or grave fault, the ward shall have a right to estimate and swear to the amount of the prejudice received, including therein the lost profits, and the tutor or curator shall be adjudged to pay

the amount estimated and sworn to, unless the Judge or Prefect shall have deemed proper to reduce the same.

63, 514.

ART. 513. The tutor or curator shall pay the current interest on the balance appearing against him, from the date his account is closed or on which he has incurred default in producing it; and he shall, on the other hand, receive interest on the balance in his favor, if he demands it, from the date his account is closed.

504, 1367, 2182, 2184.

ART. 514. Every right of action of the ward against the tutor or curator by reason of the tutorship or curatorship, shall prescribe in four years, counted from the date upon which the ward shall have ceased to be subject to guardianship.

If the ward should die before the expiration of the four years, such right of action shall prescribe in the time lacking to complete them.

504, 512.

ART. 515. He who discharges the duties of a tutor or curator, not being so in fact, but under the belief that he is, has all the obligations and liabilities of the real tutor or curator, and his acts shall not be binding upon the ward, excepting in so far as the latter may have derived positive advantage therefrom.

If his tutorship or curatorship shall have been confirmed, and he shall have administered honestly, he shall be entitled to the usual compensation, and the trust may be conferred upon him, if no person having a better right to exercise it should appear.

But if he should have acted in bad faith, pretending to be the tutor or curator, he must be removed from the administration, and deprived of all the emoluments of the tutorship or curatorship, without prejudice to the penalty which may lie by reason of the imposition.

600, 2304 *et seq.*

ART. 516. He who, in a case of necessity and to protect the ward, shall assume the administration of the property of the latter, shall apply to the Prefect immediately, in order that he may provide for the tutorship or curatorship, and in the meantime he shall act as *negotiorum gestor* and shall have the obligations and rights of such only. Any voluntary delay in applying to the Prefect shall render him liable, even for a very slight fault.

2146, 2304 *et seq.*

TITLE XXV.

Special Rules Relating to Tutorship.

ART. 517. With regard to the bringing up and education of the ward, the tutor is obliged to defer to the will of the person or persons in charge thereof, according to the provisions of Title 22; without prejudice to appealing to the Prefect or Judge when he shall consider it advisable.

But the father or mother exercising a tutorship, shall not be obliged to consult any person whatsoever in this matter, unless the father, in conferring the tutorship upon the mother, shall have imposed this obligation; in such case the provisions of article 482 shall be observed.

253, 254, 258. 53, par. 2, 61 to 64 of law 153 of 1887.

ART. 518. The tutor, in case of negligence of the person or persons in charge of the bringing up and education of the ward, shall by all reasonable means endeavor to have them comply with their duty, and if necessary, shall appeal to the Prefect or Judge.

Articles cited and 434, 582, par. 1.

ART. 519. The ward shall not reside in the dwelling or under the special care of any one of those who would succeed to his property in the event of his death.

Neither legitimate ascendants nor natural parents are subject to this exclusion.

552 par. 2.

ART. 520. If the parents should not have provided by testament for the bringing up and education of the ward, the tutor shall furnish what may be necessary for these purposes, according to the social rank of the family, taking it from the property of the ward, and, in so far as possible, from the fruits.

The tutor shall be liable for every immoderate expenditure in the bringing up and education of the ward, even though it be taken from the fruits.

In order to protect his liability, he may request the Judge to fix the maximum sum which is to be spent on the bringing up and education of the ward, in view of his means.

ART. 521. If the fruits of the property of the ward should not be sufficient for his moderate support and the necessary education, the tutor may alienate or encumber a portion of the property, not contracting any

loans nor touching the real property or productive capitals, except under extreme necessity and with the proper authority.

483, 1810.

ART. 522. If the ward be indigent, the tutor shall apply to the persons who by reason of their relationship to the ward, are under the obligation of giving him support, reconvening them judicially if necessary, in order to force them to do so.

411 *et seq.*

ART. 523. Continued negligence on the part of the tutor in providing for the congruous support and education of the ward, is a sufficient motive to relieve him from the tutorship.

468 par. 3.

TITLE XXVI.

Special Rules Relating to the Curatorship of a Minor.

ART. 524. The *curatorship of a minor*, of which this Title treats, is that to which an emancipated adult is subject by reason of his age only.

ART. 525. A minor who has obtained qualification as to age cannot be given a curator. None of the provisions of this Title applies to him.

339, 343.

ART. 526. An adult minor having no curator, must request the appointment of one of the Judge or Prefect, designating the person desired.

If the minor should not make this request, the relatives may do so; but the designation of the person shall always be made by the minor or by the Judge or Prefect in his stead.

The Judge or Prefect, after hearing the defender of minors, shall accept the person designated by the minor, if suitable.

34, 1504 par. 3, 61, 1027.

ART. 527. The curator may, with regard to the bringing up and education of the minor, exercise the powers conferred upon the tutor in the preceding title with respect to those under the age of puberty.

517.

ART. 528. A minor under curatorship shall have the same administrative powers as a son of a family, with regard to the property acquired by him in the exercise of a profession or industry.

The provisions of article 301, regarding the son of a family and the father, apply to the minor and the curator.

294, 290, 1504 par. 3.

ART. 529. The curator represents the minor, in the same manner as the tutor represents one under the age of puberty.

The curator may, nevertheless, if he should deem it advisable, entrust to the ward the administration of a portion of his own property; but he must authorize, under his liability, the acts of the ward in this administration.

The authority shall be presumed for all ordinary acts connected therewith.

480 *et seq.*, 66 pars. 2 and 3, 2158.

ART. 530. The ward shall have a right to petition for the intervention of the defender of minors, when any of the acts of the curator is to his manifest prejudice; and the defender, if he should find the claim to be well founded, shall apply to the Judge or Prefect.

TITLE XXVII.

Special Rules Relating to the Curatorship of Spendthrifts.

ART. 531. Persons who by reason of being prodigals or spendthrifts, shall have been interdicted from administering their property, shall be given a legal curator, and in the absence of the latter, a dative curator.

Such curatorship may be testamentary in the case of article 540.

443, 545 par. 2, 557.

ART. 532. The proceedings for interdiction may be instituted by the spouse who is not divorced from the alleged spendthrift, by any of his legitimate relatives by consanguinity to the fourth degree, by his parents, children and natural brothers, and by the representative of the Department of Public Prosecution (*Ministerio Publico*).

The representative of the Department of Public Prosecution shall be heard even in the cases in which the proceedings for interdiction may not have been instituted by him.

533, 61.

ART. 533. If the alleged spendthrift be a foreigner, the proceedings may also be instituted by the proper diplomatic or consular official.

570.

ART. 534. The prodigality must be proved by repeated acts of squandering which manifest a total lack of prudence.

Habitual gambling, in which considerable portions of the patrimony are risked; valuable donations without adequate cause; ruinous expenditures, authorize the interdiction.

1676.

ART. 535. Until a decision shall be rendered in the proceedings, the Judge or Prefect may, by virtue of the verbal statements of the relatives or of other persons, and after hearing the explanations of the alleged spendthrift, decree a provisional interdiction.

ART. 536. The decrees of provisional and absolute interdiction must be recorded in the office for the registration of public instruments and made known to the public by announcements published in the "*Diario Oficial*" or periodical of the Nation, and by notices which shall be posted in at least three of the most frequent localities of the Territory.*

The registration and the notice must be confined to a statement that such person, designated by his name, surname and domicile, does not have the free administration of his property.

ART. 537. The curatorship shall be deferred:

1. To the husband who is not divorced, if the wife should not be entirely separate in property.
2. To the legitimate ascendants or natural parents; natural married parents cannot fill this office.
3. To the legitimate collaterals to the fourth degree, or to the natural brothers.

The Judge or Prefect shall be at liberty to select in each class designated in Nos. 2 and 3, the person or persons appearing to him most suitable.

In the absence of the aforementioned persons, dative curatorship shall lie.

566, 550, 539, 591, 592, 457 last paragraph. 61, par. 2, of law 153 of 1887.

ART. 538. The curator of the husband shall administer the conjugal partnership as long as it subsists, and the tutorship or curatorship of the minor children of the spendthrift.

1814.

ART. 539. The wife cannot be the curatrix of her spendthrift husband.

But if she should be over twenty-one years of age, or should attain said age after the interdiction, she shall be entitled to demand separation of property.

When separate in property she shall be free to administer it; but in order to alienate or mortgage the real property, she shall need first a decree of the court.

587, 550 No. 1, 551, 592, 190, 200, 204, 189, 1810.

* The Code of Chile says: " . . . posted in at least three of the most *frequented* localities"

ART. 540. If the father or mother having the curatorship of the spendthrift child should die, they may appoint by testament the person who is to succeed them in the guardianship.

445.

ART. 541. The spendthrift shall have the right to appeal to the court when the acts of the curator are disagreeable or prejudicial to him, in order that the proper legal remedy may be had.

630 par. 2.

ART. 542. The spendthrift shall always preserve his liberty and shall have for his personal expenses the free disposition of a sum of money, in proportion to his income, and fixed by the Judge or Prefect.

Only in extreme cases can the curator be authorized himself to provide for the support of the spendthrift, and procure him the necessary objects.

ART. 543. The spendthrift shall be rehabilitated for the administration of his property, if it be judged that he can do so properly; and after having been rehabilitated, the interdiction may be renewed, if cause therefor should arise.

556.

ART. 544. The provisions indicated in the preceding article shall be decreed by the Judge or Prefect, with the same formalities as for the original interdiction; and they shall be followed by the record and notice prescribed by article 536, which in the case of the rehabilitation shall be limited to a statement that such person (designating his name, surname and domicile) has the free administration of his property.

TITLE XXVIII.

Special Rules Relating to the Curatorship of the Insane.

ART. 545. An adult who is in a habitual state of insanity must be deprived of the administration of his property, even though he should have lucid intervals.

The curatorship of a demented person may be testamentary, legal or dative.

553, 554, 1061 No. 2, 443, 531 par. 2, 557.

ART. 546. When an insane child shall have reached the age of puberty, the father of the family may continue caring for his person and property till majority; upon the attainment of which, proceedings for interdiction must be instituted.

1027.

ART. 547. The tutor of an insane person cannot afterwards exercise the curatorship without the judicial interdiction first taking place, except for the time necessary to secure the interdiction.

The same shall be necessary when the insanity shall occur while the minor is under curatorship.

432, 548 par. 2, 574.

ART. 548. Proceedings for the interdiction of an insane person may be brought by the same persons who have the right to do so in the case of a spendthrift.

They must be instituted by the curator of a minor becoming insane during the curatorship.

But if the insanity should be violent, or the insane person should cause serious inconvenience to the inhabitants, the Prefect or any resident of the town may also institute the proceedings.

532, 533, 1027.

ART. 549. The Judge or Prefect shall secure information regarding the prior life and habitual conduct of the alleged insane person, and shall hear the opinion of physicians in whom he has confidence as to the existence and nature of the insanity. The provisions of articles 535 and 536 apply to cases of insanity.

ART. 550. The curatorship of the insane person shall be deferred:

1. To his spouse who is not divorced; but if the insane wife should

be separate in property, according to articles 200 and 201, an associate curator shall be appointed with the husband for the administration of that property to which the separation extends.

2. To his legitimate descendants.
3. To his legitimate ascendants.
4. To his natural parents or sons; married natural parents cannot exercise this office.
5. To his legitimate collaterals to the fourth degree; or to his natural brothers.

The Judge or Prefect shall select in each class of those designated in Nos. 2, 3, 4 and 5, the person or persons whom he may consider most suitable.

In the absence of all the aforementioned persons, dative curatorship shall lie.

587 No. 2, 539, 434, 582, 537 No. 2, 591, 457 last par. 61 par. 2 of law 153 of 1887.

ART. 551. The curatrix of her husband who is insane, shall have the administration of the conjugal partnership and the guardianship of their minor children.

If by reason of her minority or another impediment she should not be deferred the curatorship of her insane husband, she may at her option, upon the cessation of the impediment, request such curatorship or the separation of property.

190, 1814, 538.

ART. 552. If two or more curators should be appointed to the insane person, the immediate care of the person may be entrusted to one of them, and the administration of the property left to the others.

The immediate care of the person of the insane individual shall not be granted to any person who may be called to inherit from him, unless it be his father or mother, or his spouse.

519.

ART. 553. The acts and contracts of the insane person, subsequent to the interdiction, shall be null; even though it be alleged that they were executed or entered into during a lucid interval.

And, on the contrary, acts and contracts executed or entered into prior to the interdiction, shall be valid; unless it be proved that the person executing or celebrating them was insane at that time.

598.

ART. 554. An insane person shall not be deprived of his personal liberty, excepting in the cases in which there is ground to fear that taking advantage thereof he would injure himself, or cause danger or serious inconvenience to others.

Nor can he be taken to an insane asylum, nor locked up, nor tied, not even for a moment, until on the petition of the curator or of any person in the town, judicial authority is obtained to carry out any of these measures.

ART. 555. The fruits of his property, and, in a necessary case and with the authority of the court, the capital shall be mainly used in alleviating his condition and securing his recovery.

559.

ART. 556. An insane person may be rehabilitated for the administration of his property if it shall appear that he has permanently recovered his reason; and he may also be disqualified again for good cause.

In these cases the provisions of articles 543 and 544 shall be observed.

TITLE XXIX.

Special Rules Relating to the Curatorship of Deaf Mutes.

ART. 557. The curatorship of a deaf mute, who has attained the age of puberty, may be testamentary, legal or dative.

443, 531 par. 2, 545 par. 2.

ART. 558. Articles 546, 547, 550, 551 and 552 apply to deaf mutes.*

ART. 559. The fruits of the property of the deaf mute and, in a necessary case, with judicial authorization, the capitals, may be specially employed in alleviating his condition and in procuring him the proper education.

555.

ART. 560. The curatorship shall cease when the deaf mute shall have become capable of understanding and making himself understood in writing, if he himself requests it, and shall have sufficient intelligence for the administration of his property; with regard to which the Judge or Prefect shall secure competent testimony.

* This article has been substituted by article 23 of law 57 of 1887.

TITLE XXX.

Curatorship Ad Bona.

ART. 561. In general, the appointment of a curator of the property of an absentee shall take place when the following conditions are present:

1. That his whereabouts is unknown, or at least that he has ceased to be in communication with his people, and that in the absence of communication the said absentee or third persons will suffer grave prejudice.
2. That he has not appointed an attorney-in-fact, or has appointed him for special things or affairs only.

443, 567.

ART. 562. This appointment may be requested by the same persons who have the power of instituting proceedings for the interdiction of an insane person.

Furthermore, the creditors of the absentee shall have the right to request that a curator *ad bona* be appointed to answer their suits.

Among absentees is included a debtor who absconds.

548, 532, 533.

ART. 563. Such persons may be appointed to the curatorship of the property of an absentee as may be appointed to the curatorship of an insane person in accordance with article 537,* and the same order of preference shall be observed among them.

The Judge or Prefect may, nevertheless, ignore said order on the petition of the legitimate heirs or of the creditors, if he should deem it advisable.

He may also appoint more than one curator, and divide the administration among them, in the case of extensive property situated in different departments.

ART. 564. The defender of absentees (*defensor de ausentes*) shall intervene in the appointment.

ART. 565. If the absentee shall have left a wife not divorced, the provisions for such cases of the Title *Of Conjugal Partnership* shall be observed.

ART. 566. If the absent person be a married woman, the husband cannot be curator, except according to the terms of article 537, number 1.

ART. 567. An attorney in fact constituted for certain acts or affairs, is subordinate to the curator; who, nevertheless, cannot act in contraven-

* Article 550 should have been cited, as is done in the Code of Chile.

tion of the instructions given by the absentee to the attorney, except with the authority of the Judge or Prefect.

561 No. 2.

ART. 568. If the whereabouts of the absentee be unknown, it shall be the first duty of the curator to ascertain it.

When the whereabouts of the absentee shall be known, the curator shall do all that lies in his power to communicate with him.

ART. 569. A curator shall be appointed for a vacant inheritance, that is to say, for the property of a deceased person whose inheritance has not been accepted.

The curatorship of a vacant inheritance shall be dative.

1289 par. 4, 1297, 443 par. 4.

ART. 570. If the deceased person for whose estate it is necessary to appoint a curator, should have foreign heirs, the Consul of the Nation of the latter shall have the right to propose the curator or curators who are to have the custody of and administer the property.

533.

ART. 571. The Court shall confirm the curatorship of the curator or curators proposed by the consul, if they be suitable persons; and on the petition of the creditors, or of other persons interested in the succession, he may add to said curator or curators one or more others, according to the amount and situation of the property composing the inheritance.

ART. 572. After the expiration of four years from the date of the death of the person whose estate is under curatorship, the Judge or Prefect, on the petition of the curator and after an investigation into the matter, may order that all the hereditary property in existence be sold, and that the proceeds be placed out at interest with adequate security, and if there be no security, they be turned into the coffers of the Nation (the National Treasury of the Republic).

483, 484, 575 *et seq.*, 105.

ART. 573. Property which will fall to the posthumous child, if born alive, and within the proper time, shall be in charge of the curator who may have been designated for this purpose by the testament of the father, or of a curator appointed by the Judge or Prefect, on the petition of the mother, or on the petition of any of the persons who are to succeed to said property, if the posthumous child does not succeed thereto.

Two or more curators may be appointed if advisable.

92, 237 par. 2, 232, 233.

ART. 574. The person designated in the testament of the father for the tutorship of the child, shall be considered as designated also for the curatorship of the eventual rights of such child, if the father should die while the child is still in its mother's womb.

66, 444.

ART. 575. The curator of the property of an absent person, the curator of a vacant inheritance, the curator of the eventual rights of one not yet born, are subject in their administration to all the restrictions prescribed for tutors or curators, and furthermore, they are prohibited from executing any administrative acts other than those of mere custody and preservation, and the acts necessary for the collection of the credits and payment of the debts of their respective principals.

433, 1297, 483, 484, 521, 577, 2158.

ART. 576. They are especially prohibited from altering the form of property, from contracting loans and alienating even the movable property which is not corruptible, unless such alienation should be made in the ordinary course of the business of the absentee, or that the payment of debts should make it necessary.

2158.

ART. 577. Notwithstanding the provisions of the preceding articles, the acts forbidden to curators *ad bona* therein, shall be valid, if the necessity or utility thereof being established, the Judge or Prefect should first approve them.

The owner of the property shall have the right to have the nullity of any of such acts declared, which have not been authorized by the Judge or Prefect; and the nullity having been declared, the curator shall be liable for any prejudice which the said person or third persons may have suffered therefrom.

ART. 578. It shall be the duty of curators *ad bona* to enforce the rights and conduct the defense in court of the persons they respectively represent; and the persons having credits against the property may enforce the same against the respective curators.

1289, par. 2.

ART. 579. The curatorship of the rights of the absentee expires upon his return; or by the fact of a general agent duly constituted taking charge of his business; or as a result of his death; or by a decree granting provisional possession in the case of disappearance.

The curatorship of a vacant inheritance ceases by the acceptance of the inheritance, or in the case of article 572, by the deposit of the proceeds of the sale in the Treasury of the Nation.

99.

ART. 580. The curatorship of the eventual rights of a person about to be born, ceases as a result of the birth.

Every curatorship of property ceases by the extinction or complete inversion of the property affected.

433.

TITLE XXXI.

Of Associate Curators.

ART. 581. Associate curators (*curadores adjuntos*) have over the property placed in their charge, the same administrative powers as tutors, unless they be associated to curators *ad bona*.

In such case they shall have no powers but those of curators *ad bona*.

434.

ART. 582. Associate curators are independent of the respective parents, husbands or guardians.

The subsidiary liability imposed by article 508 upon tutors or curators who do not administer, is extended to the respective parents, husbands or guardians with respect to associate curators.

550 No. 1, 452.

TITLE XXXII.

Of Special Curators.

ART. 583. Special curatorships are dative.

Curators for suits or *ad litem* are appointed by the Court or Prefect taking cognizance of the suit.

435, 443, 537, and 550.

ART. 584. A special curator is not obliged to prepare an inventory, but only to give a receipt for the documents, sums or effects placed at his disposal for the discharge of his duties, of which he shall render a faithful and true account.

464 par. 2, 470, 465 No. 3.

TITLE XXXIII.

Incapacities for and Excuses From Exercising Tutorship or
Curatorship.

ART. 585. There are persons forbidden by law from being tutors or curators, and persons permitted by law to be excused from discharging a tutorship or curatorship.

CHAPTER I.

Of Incapacities.

PARAGRAPH I.

Rules Relating to Physical and Moral Defects.

ART. 586. The following are incapable of exercising tutorship or curatorship:

1. The blind.
2. The dumb.
3. The insane, even though not under interdiction.
4. Bankrupts, as long as they shall not have satisfied their creditors.
5. Those deprived from the administration of their own property by reason of prodigality.
6. Those having no domicile in the Nation.
7. Those who can neither read nor write, with the exception of the father or mother called upon to exercise the legal or testamentary guardianship of their legitimate or natural children.
8. Those of notorious bad conduct.
9. Those judicially sentenced to a penalty of those designated in article 315, No. 4, even though they may have been pardoned.
10. A woman who has been divorced for adultery.
11. He who has been deprived of the paternal power, according to article 310.
12. Those who by reason of fraudulent or careless administration were removed from a previous guardianship, or in the proceedings subsequent thereto were, by reason of fraud or grave fault, sentenced to indemnify the ward.

PARAGRAPH 2.

Rules Relating to Sex.

ART. 587. Women are incapable of exercising tutorship or curatorship, with the following exceptions:

1. A woman who has no husband living, may be the guardian of her legitimate descendants or of her natural children.

2. A woman who is not divorced may be the guardian of her husband who is insane or a deaf mute.

539.

3. A woman, during the life of her husband, may be the guardian of the common children, when in accordance with Chapter 4, Title *Of marriage agreements and of the conjugal partnership*, the administration of the conjugal partnership is entrusted to her.

4. The adopting mother may be the guardian of the adoptive child. These exceptions do not exclude the disqualifications arising from a cause other than the sex.

602 No. 5, 599, 550, 551, 558, 539, 1814, 439. 53 par. 2 of law 153 of 1887.

PARAGRAPH 3.

Rules Relating to Age.

ART. 588. Those who have not attained the age of twenty-one years cannot be tutors or curators, even though they shall have obtained their qualification as to age.

Nevertheless, if a tutorship or guardianship be deferred to an ascendant or descendant who has not attained the age of twenty-one years, it shall not be conferred upon him until he attains said age, and a provisional one shall be appointed *ad interim*.

The same action shall be taken in the case of a testamentary tutor or curator who shall not have attained the age of twenty-one years.

But the appointment of a tutor or curator who is a minor shall not be valid, if, upon attaining the age of twenty-one years, he would be obliged to exercise the tutorship or curatorship for less than two years only.

34 par. 2, 339, 1504 par. 3, 1329, 461.

ART. 589. If there be no certainty as to the age, it shall be judged according to article 400, and if, consequently, the charge be conferred upon the tutor or curator appointed, it shall be valid and subsist, whatever the age really be.

PARAGRAPH 4.

Rules Relating to Family Relations.

ART. 590. The step-father cannot be the tutor or curator of his step-son or daughter.

ART. 591. The husband cannot be the tutor or curator of his natural children, without the consent of his wife.

537 No. 2, 550 No. 4. 61 par. 2 of law 153 of 1887.

ART. 592. The son cannot be the curator of his spendthrift father.

539, 550 Nos. 2 and 4, 594 last par.

PARAGRAPH 5.

Rules Relating to the Opposition of Interests or Difference of Religion Between the Guardian and the Ward.

ART. 593. He who disputes the civil status of a person cannot be the tutor or curator of such person.

346.

ART. 594. The creditors or debtors of a person, or persons litigating against him, in their own or another's interest, cannot alone be the tutors or curators of such person.

The Judge or Prefect, as may appear most advisable to him, may appoint other tutors or curators to administer jointly, or shall declare them disqualified to act.

The provisions of this article shall not apply to the spouse and to the ascendants and descendants of the ward.

ART. 595. The provisions of the preceding article do not apply to the testamentary tutor or curator, if it be established that the testator had knowledge of the credit, debt or litigation, at the time of appointing said tutor or curator.

Nor do they extend to the credits, debts or litigation of slight importance in the opinion of the Judge or Prefect.

ART. 596. Those who profess a religion different from that in which the ward must be or has been brought up, cannot be the tutors or curators of the latter, unless they be accepted by the ascendants, and in default of the latter by the nearest relatives by consanguinity.

PARAGRAPH 6.

Rules Relating to Incapacities Occurring Subsequently to Appointment.

ART. 597. The aforementioned causes of incapacity which shall occur during the exercise of the tutorship or curatorship, shall put an end thereto.

ART. 598. The insanity of the tutor or curator shall make all acts executed during the same null and void, even though he may not have been placed in interdiction.

553.

ART. 599. If a female legitimate ascendant or natural or adoptive mother, tutrix or curatrix, should desire to marry, she shall first announce it to the Judge or Prefect in order that he may appoint the person who is to succeed her; and should she not do so, she and her husband shall be liable for the administration, *in solidum*, the liability of the husband extending even to the acts of the tutrix or curatrix prior to the marriage.

175, 448, 1331, 2502 No. 6, 1568 par. 2.

PARAGRAPH 7.

General Rules Regarding Incapacities.

ART. 600. Tutors or curators who shall have concealed the causes of incapacity which existed at the time the appointment was deferred to them, or which occurred subsequently, in addition to being subject to all the liabilities of their administration, shall forfeit the emoluments for the time that they exercised the charge, knowing of the incapacity.

Ignored causes of incapacity do not vitiate the acts of the tutor or curator; but, if known to him, they shall put an end to the tutorship or curatorship.

515.

ART. 601. A guardian who believes himself incapacitated from exercising the tutorship or curatorship deferred to him, shall be allowed for the purpose of instituting proceedings as to his incapacity, the same terms as are allowed in proceedings on excuses, prescribed by article 608.

If the incapacity should occur during the exercise of the tutorship or curatorship, he must denounce it to the Judge or Prefect within three days subsequent to the date upon which said incapacity may have

begun to exist or he may have had notice thereof; and such period shall be extended, in the same manner as the term of thirty days prescribed in article 608.

The incapacity of the tutor or curator may also be denounced to the Judge or Prefect by any of the relatives by consanguinity of the ward, by his spouse, and even by any person in the town.

1332.

CHAPTER 2.

Of Excuses.

ART. 602. The following may be excused from tutorship or curatorship:

1. National employees, the President of the Union and those discharging judicial functions.
2. The administrators and collectors of national revenues.
3. Those who are obliged to fill a public office for a long term, at a considerable distance from the territory where the guardianship is to be exercised.
4. Those who have their domicile at a considerable distance from said territory.
5. Women.

587.

6. Those who are suffering from a serious chronic disease, or who have attained the age of sixty-five years.

7. Poor persons who are under the necessity of living from their personal daily work.

8. Those who are already exercising two guardianships; and those who being married or having children, exercise one; but special curatorships shall not be taken into consideration.

The Judge or Prefect may count as two a tutorship or curatorship which is very complicated or burdensome.

9. Those who have under their paternal power five or more living children; counting also those who have died in an engagement during war, under the flags of the Union.

585, 618, 1028, 1334, 1384.

ART. 603. In the case of the preceding article, No. 8, he who shall exercise two or more guardianships of persons who are not his children, shall have the right to demand that he be relieved of one of them, in order to undertake the guardianship of his own child; but he cannot excuse himself from the latter.

ART. 604. The excuse of No. 9, article 602, cannot be pleaded for the purpose of being relieved of the tutorship or curatorship of the son.

ART. 605. If the person pleading as an excuse that he cannot find sureties should own real property, such excuse shall not be allowed; in such case he shall be obliged to constitute a mortgage thereon for an amount estimated as sufficient to answer for his administration.

466, 2363 par. 2.

ART. 606. He who shall have exercised the guardianship of the same ward for ten or more years continuously, as tutor or curator, or as tutor or curator successively, may be excused from continuing the exercise thereof; but this excuse cannot be pleaded by the spouse, nor by a legitimate ascendant or descendant, nor by a natural father or son.

ART. 607. The excuses mentioned in the preceding articles must be pleaded by the person desiring to take advantage thereof, at the time of deferring the guardianship; and shall be admissible if they should occur during the same.

ART. 608. Excuses for not accepting a guardianship deferred, must be pleaded within the following terms:

If the tutor or curator appointed is within the territory in which the Judge or Prefect who is to take cognizance thereof resides, he shall plead them within thirty days after the date of the notification of his appointment; and if he be without such territory, this term shall be extended four days for every fifty kilometers of distance between the city which is the capital of said territory and the actual residence of the tutor or curator appointed.

601.

ART. 609. Any delay exceeding the legal term, and which could have been avoided with average diligence, shall impose upon the tutor or curator the liability for the damages which his delay in taking charge of the tutorship or curatorship might entail; and it shall also make his voluntary excuses inadmissible, unless it should be to the interest of the ward to accept them.

ART. 610. Causes for excuse arising during the tutorship, do not prescribe on account of any delay in pleading them.

ART. 611. If the tutor or curator appointed shall be in a foreign country, and it is not known when he will return, or if his whereabouts be unknown, the Judge or Prefect may, according to the circumstances, fix a term within which the tutor or curator is to present himself to take charge of the tutorship or curatorship, or be excused therefrom; and upon the expiration of the term he may, according to the circumstances, extend it or declare the appointment invalid, which appointment shall

not be renewed, even though the tutor or curator should subsequently appear.

CHAPTER 3.

Rules Common to Incapacities and Excuses.

ART. 612. Proceedings on the incapacities or excuses pleaded by the guardian must be conducted with the respective counsel.

ART. 613. If, at first instance, the Judge or Prefect should not admit the causes of incapacity pleaded by the guardian, or should not except his excuses, and if the guardian should not appeal, or the appellate court should confirm the decision of the Judge or Prefect *a quo*, the guardian shall be liable for any damages resulting to the ward through his delay in assuming the guardianship.

This liability shall not lie, if the tutor or curator, to exonerate himself therefrom, should offer to undertake the tutorship or curatorship temporarily.

TITLE XXXIV.

Of the Compensation of Tutors and Curators.

ART. 614. The tutor or curator shall receive, as a general rule, as compensation for his work, one-tenth of the fruits of that property of his ward which he administers.

If there should be a number of tutors or curators administering jointly, the tenth shall be divided among them in equal parts. But if one of the guardians should discharge functions which do not include the receipt of fruits, the Judge or Prefect shall deduct from the tenth part of the others the compensation which he may consider it just to allow him.

He may also increase the tenth part of a guardian, deducting this increase from the tenth of the others, when there is a manifest lack of proportion between the respective services and emoluments.

These two orders shall be made by the Judge or Prefect, in a necessary case, on the petition of the respective guardian, and with a hearing of the others.

620, 622 to 626.

ART. 615. The distribution of the tenth part shall be made according to the general rules of the preceding article and of its first paragraph, provided that it be not changed by agreement of the parties or by a decree of the Judge or Prefect, in accordance with the second and third paragraphs thereof; nor shall the new distribution be effective but from the date of the agreement or of the decree.

ART. 616. The necessary expenses incurred by the tutors or curators in the discharge of their duties shall be allowed them separately, and shall not be included in the tenth.

ART. 617. Any allowance expressly made to the testamentary tutor or curator as compensation for his services, shall be imputed to that part of the tenth of the fruits due said tutor or curator; and if it should be less, he shall have the right to have his remuneration completed; but if it should exceed said tenth, he shall not be obliged to pay the excess if the latter is within the quota of property of which the testator could freely dispose.

1242.

ART. 618. Accepted excuses deprive the testamentary tutor or curator of the allowance which may have been made him for his services.

But excuses arising subsequently, shall deprive him of a proportionate part only.

1128, 1028, 1334 par. 2, 1384, 585, 619.

ART. 619. Pre-existing incapacities deprive the guardian of any right to the aforementioned allowance.

If the incapacity should occur without the act or fault of the guardian, or if he should die during the guardianship, it shall not be necessary to return the thing allowed either in whole or in part.

597, 618.

ART. 620. If a provisional tutor or curator relieves a regular tutor or curator of all his duties, the latter's full tenth shall belong to the former for the entire period of the duration of his administration; but if the regular tutor or curator should retain a part of his functions, he shall also retain a proportionate part of his tenth portion.

If the remuneration should consist in a hereditary quota or legacy and the regular incumbent should have made it necessary to appoint a provisional one for a justifiable cause, such as a public office or to avoid some serious injury to his interests, he shall retain his inheritance or legacy in full, and the provisional one shall receive one-tenth of the fruits of what he may administer.

ART. 621. A tutor or curator who shall fraudulently administer or who shall violate the provisions of paragraph 13, article 140, loses his right to the tenth, and shall be under the obligation of making restitution of all that he may have received in remuneration for his guardianship.

If he administer carelessly, he shall not receive the tenth part of the fruits with regard to that part of the property which through his negligence may have suffered injury or a considerable reduction in producing capacity.

In either case, the ward is, furthermore, entitled to the recovery of damages.

No. 13 of art. 140, cited, has been repealed by art. 45 of law 57 of 1887.

ART. 622. If the fruits of the patrimony of the ward should be so meager that they are hardly sufficient for his bare subsistence, the tutor or curator shall be obliged to serve gratuitously; if the ward should acquire more property, either during the guardianship or thereafter, the guardian cannot demand anything by reason of the tenth pertaining to the former time.

ART. 623. The guardian shall collect his tenth as the fruits are realized.

In order to determine the value of the tenth, there shall be taken into consideration not only the expenses inverted in the production of the fruits, but all the pensions and usufructuary charges to which the patrimony may be subject.

614.

ART. 624. With regard to the fruits hanging at the time of the beginning or expiration of the tutorship, the tenth of the tutor or curator shall be subject to the same rules which apply to a usufruct.

715, 717 par. 2, 840.

ART. 625. In general, there shall not be reckoned in the fruits from which the tenth is to be deducted, substances which, if separated, do not renew themselves or grow again, nor those the separation of which deteriorates the estate or reduces its value.

Consequently, there shall not be included in the fruits the timber or wood sold, when the cutting is not done with the regularity necessary to preserve the forests and trees as a whole.

The tenth shall extend, nevertheless, to the output of quarries and mines.

. 843.

ART. 626. The curators of the property of absentees, the curators of the eventful rights of a posthumous child, the curators of a vacant inheritance, and special curators, are not entitled to the tenth. They shall be allowed by the Judge or Prefect an equitable remuneration from the fruits of the property they administer, or a determinate amount, as compensation for their services.

TITLE XXXV.

Of the Removal of Tutors and Curators.

ART. 627. Tutors and curators shall be removed: 1. For incapacity; 2. For fraud or grave fault in the exercise of their duties, and especially for those mentioned in articles 568 and 523; 3. For manifest unsuitability; 4. For repeated acts of careless administration; 5. For immoral conduct from which injury may result to the habits of the ward.

A tutor or curator who is an ascendant or descendant, or spouse of the ward, cannot be removed for the fourth excuse* above mentioned; but another tutor or curator shall be associated to him in the administration.

434, 628.

ART. 628. Habitual carelessness in the administration shall be presumed by the fact of the property deteriorating or the fruits diminishing to a considerable extent; and a tutor or curator who does not set aside this presumption by giving a satisfactory explanation of this deterioration or diminution, shall be removed.

66.

ART. 629. He who exercises several tutorships or curatorships and is removed from one of them for fraud or grave fault, shall by said act be removed from the others, on the petition of the respective counsel or of any person of the town, or at the instance of the Court.

ART. 630. Proceedings for the removal may be instituted by any of the consanguineous relatives of the ward, or by his spouse, and even by any person of the town.

The ward himself may institute them if he has attained the age of puberty, by applying to the respective counsel.

The Judge or Prefect may also do so on his own motion.

The relatives and the representatives of the Department of Public Prosecution shall always be heard.

ART. 631. A provisional tutor or curator shall be appointed during the pendency of the proceedings for removal. The provisional guardian shall exclude the regular incumbent, if he be not an ascendant, descendant or spouse; and if he be such, he shall be associated with him.

461, 558 pars. 2, 3, and 4.

ART. 632. The tutor or curator removed must fully indemnify the ward.

He shall likewise be criminally prosecuted for the crimes he may have committed in the exercise of his duties.

*The code of Chile states: "For the fourth *cause* above mentioned."

TITLE XXXVI.

Juristic Persons.

ART. 633. A *juristic person* is a fictitious person, capable of exercising rights and contracting civil obligations, and of being judicially and extrajudicially represented.

Juristic persons are of two classes; corporations and foundations of public beneficence.

There are juristic persons which participate of both characters.

73, 1504 par. 3, 639. 24, 25 and 26 of law 57 of 1887. 27, 80 and 81 of law 153 of 1887.

ART. 634. Foundations or corporations which have not been established by virtue of a law are not juristic persons.

ART. 635. Industrial associations are not included in the provisions of this Title; their rights and obligations are governed, according to their nature, by other Titles of this Code, and by the Code of Commerce.

Nor do the provisions of this Title apply to corporations or foundations of a public character, such as institutions which are supported by funds from the National Treasury.

2079 *et seq.*

ART. 636. The regulations or by-laws of corporations, which they themselves may have established, shall be submitted for approval to the Executive Power of the Union, which shall grant such approval if they should contain nothing against public order, against the laws or good customs.

All persons who may be damaged by the by-laws of a corporation, may appeal to the Executive Power aforementioned, to have them amended in so far as they prejudice third persons, and even after having been approved they shall have a right of action for every lesion or prejudice which the application of said by-laws may have caused them or might cause them.

ART. 637. The property of a corporation does not belong either in whole or in part to any of the members composing it; and, likewise, the debts of a corporation do not give any one a right to sue therefor, either in whole or in part, any of the members composing the corporation, nor any right of action against their private property, but only against the property of the corporation.

Nevertheless, the members may, stating it, specially bind themselves, at the same time that the corporation binds itself collectively; and the liability of the members shall then be solidary, if the solidarity be expressly stipulated.

But the liability does not extend to the heirs, excepting when the members of the corporation shall have expressly bound them.

1568.

ART. 638. The majority of the members of a corporation who, according to its by-laws, have a deliberative vote, shall be considered a quorum (*sala*) or legal assembly of the entire corporation.

The will of the majority of the quorum, is the will of the corporation.

All of which is understood without prejudice to the modifications which the by-laws of the corporation may prescribe in this respect.

ART. 639. Corporations are represented by the persons authorized by law or the respective by-laws, and in the absence of either, by a resolution of the corporation conferring such representation.

62, 1505, 1637, 1853, 2104, 2105, 2157.

ART. 640. The acts of the representative of the corporation, in so far as they do not exceed the authority conferred upon him, are acts of the corporation; when they exceed such authority, they bind the representative personally only.

2104, 2105, 2157.

ART. 641. The by-laws of a corporation are binding upon it, and its members are obliged to obey them, under the penalties which said by-laws may prescribe.

ART. 642. Every corporation has the right of correctional police over its members which its by-laws confer, and shall exercise this right in accordance therewith.

2107 No. 1.

ART. 643. Corporations may acquire property of all kinds under any title, but they cannot retain the possession of the real property they may acquire without the special permission of the Congress of the Union.

Without this special permission, they shall be obliged to convey such real property within five years subsequent to the date upon which they acquired the possession thereof; and should they not do so, the property shall be forfeited.

This prohibition does not extend to the rights of usufruct, use or habitation or other rights secured upon real property.*

81 and 84 of law 153 of 1887.

* This article has been repealed by art. 45 of law 57 of 1887 and substituted by art. 27 of said law.

ART. 644. Religious communities, corporations, associations and entities are absolutely incapable of acquiring real property, even though such communities, corporations, associations or entities have the character of juristic persons.*

ART. 645. Real property possessed by corporations, with the permission of Congress, is subject to the following rules:

1. It cannot be alienated nor encumbered with a mortgage, usufruct, or servitude, nor leased for more than eight years, if it should consist of rural tenements, nor for more than five, if urban, without a previous decree from the Judge or Prefect, after an investigation into the matter, and for a reason of necessity or manifest utility.

2. After having been alienated, it may be acquired again by the corporation, and held without special permission, if the property should return to it by the resolution of the alienation and not under a new title; for example, when he who acquired it under certain obligations, fails to perform the latter, and is obliged to make restitution, or when it shall have sold said property, reserving the right of repurchase within a certain time, and such right is exercised.*

304, 496, 1813.

ART. 646. The creditors of corporations have a right of action against its property as against that of a natural person, under tutorship.

637.

ART. 647. Corporations may be dissolved notwithstanding the wishes of the members thereof, if they should threaten the safety or the interests of the Union, or do not conform to the purpose of their institution.*

ART. 648. If by death or other accidents the members of a corporation are reduced to so small a number that the purposes for which it was organized can no longer be fulfilled, or if all of them are lacking and the by-laws shall not have provided for the manner of renewing or making it up in such cases, the authority which legalized its existence shall prescribe the manner in which the renewal or completion is to be executed.

ART. 649. A corporation having been dissolved, its property shall be disposed of in the manner prescribed in its by-laws; and if no provision shall have been made therein for such case, said property shall belong to the Nation, under the obligation of applying the same to purposes similar to those of the institution. It shall be the duty of the Congress of the Union to indicate them.

* Repealed by article 45 of law 57 of 1887.

ART. 650. Eleemosynary foundations which are to be administered by a number of persons, shall be governed by the by-laws which the founder may have provided; and if the founder should not have expressed his will in this regard, or should have done so in an incomplete manner, this defect shall be supplied by the President of the Union.

1113 par. 3.

ART. 651. The provisions of articles 637 to 649 regarding corporations and the persons composing them, shall apply to eleemosynary foundations and to the persons administering them.*

ART. 652. Foundations expire by the destruction of the property destined to their maintenance.

822 No. 3, 866, 2431 par. 1.

* Repealed by art. 45 of law 57 of 1887.

BOOK SECOND.

OF PROPERTY AND ITS OWNERSHIP, POSSESSION,
USE AND ENJOYMENT.

TITLEI.

Of the Different Kinds of Property.

ART. 653. Property consists of corporeal and incorporeal things.

Corporeal things are those which have a real existence and can be perceived by the senses, such as a house, a book.

Incorporeal things are those which consist in mere rights, such as credits and active servitudes.

CHAPTER I.

Of Corporeal Things.

ART. 654. Corporeal things are divided into movables and immovables.

ART. 655. *Movables* are things which can be carried from one place to another, whether by their own movement, such as animals (which are for this reason called self-moving [*semovientes*]), or which can be moved only by an exterior force, as inanimate things.

Things which being movables by nature, are reputed immovables on account of their destination, according to art. 658, are excepted.

ART. 656. *Immovables* or *real property* are things which cannot be transported from one place to another; such as lands and mines, and things which are permanently attached thereto, such as buildings and trees.

Houses and landed property are called *estates* or *tenements*.

ART. 657. Plants are immovables, as long as they are attached to the soil by their roots, unless they be in pots or boxes which can be carried from one place to another.

1886.

ART. 658. Things permanently destined to the use, cultivation and improvement of an immovable, even though they can be separated without injury, are considered immovables, although by their nature they are not so. Such are:

The flags of a pavement.

Piping.

Agricultural or mining implements, and animals actually employed in the cultivation or improvement of an estate, provided they have been placed thereon by the owner of the estate.

The fertilizer thereon employed by the owner of the estate for its improvement.

The presses, boilers, casks, stills, hogsheads and machinery, which form part of an industrial institution adhering to the soil and belonging to the owner of the latter.

Animals kept in warrens, aviaries, ponds, hives, and any other vivaries, provided the latter are attached to the soil, or are a part of the soil itself or of a building.

660, 661, 672, 1886, 2445, 1163.

ART. 659. The products of immovables, and the things accessory thereto, such as the grass in fields, the wood and fruit of trees, the animals in a vivary, are considered movables; even before their separation, for the purpose of constituting a right in said products or things in favor of a person other than the owner.

The same applies to the earth or sand of a soil, to the ores of a mine, and to the stone of a quarry.

1857, par. 3, 715, 2445.

ART. 660. Articles of comfort or adornment nailed or affixed to the walls of houses, which can be easily removed without injury to the said walls, such as stoves, mirrors, pictures, tapestries, shall be considered movables. If the pictures or mirrors are laid into the walls so that they form one piece with them, they shall be considered a part thereof even though they can be removed without injury.

658.

ART. 661. Things which are considered immovables, by reason of being accessory to real property, do not cease being so by their momentary separation; for example, bulbs and bulbous roots which are taken up with the intention of replanting them, and paving stones or stones which are removed from their places for the purposes of building or repair, and with the intention of returning them thereto. But when they are removed for the purpose of employing them otherwise, they cease being immovables.

1886, 2445.

ART. 662. When the law or a man employs the expression *movable property* (*bienes muebles*) without any other qualification, it shall comprise all that is understood by movable things according to article 655.

In the *furniture of a house* (*muebles de una casa*) shall not be included money, documents and papers, scientific or artistic collections, books or their shelves, medals, arms, implements of arts and trades, jewelry, wearing apparel and bed clothing, carriages or horses with their harness, grains, liquids (*caldos*), merchandise, nor generally other things which do not form the furnishings of a house.

1179.

ART. 663. Movable things are divided into fungible and not fungible. To the former belong those which cannot be used in a manner appropriate to their nature without being consumed.

Specie or money in so far as it is consumed by the person using it as such, is a fungible thing.

CHAPTER 2.

Of Incorporeal Things.

ART. 664. Incorporeal things are real or personal rights.

ART. 665. A *real right* (*jus in re*.—Tr.) is that which we have in a thing without respect to a specific person.*

Real rights are that of ownership, that of inheritance, those of usufruct, use or habitation, those of active servitudes, that of pledge and that of mortgage. *Real actions* result from these rights.

948, 950.

ART. 666. *Personal rights* or *credits* are those which can be demanded only of certain persons who, by their act or by a mere provision of law, have contracted the correlative obligations; such as that which the lender has against the debtor for the money loaned, or the son against the father for support. From these rights *personal actions* result.

ART. 667. Rights and actions are considered movables or immovables, according to the nature of the thing against which they are to be exercised or which is owed. Thus, the right of usufruct in an immovable, is an immovable. Thus, the action of the purchaser to secure the delivery of an estate purchased, is an immovable; and the action of one who has loaned money to recover it, is a movable.

ART. 668. Acts which are due are considered movables. An action to force an artificer to perform the work agreed upon, or to recover damages for breach of contract, is comprised, consequently, in the class of movable property.

* See Cevres de Pothier (1781), vol. 4, p. 343; referred to in "Studies in the Civil Law and its relations to the law of England and America," by William Wirt Howe, Boston, 1896 (pp. 79-80).

TITLE II.

Of Ownership.

ART. 669. *Ownership* (which is also called *property*) is the real right in a corporeal thing, to enjoy and dispose thereof arbitrarily, if not against the law or the right of another.

Ownership separated from the enjoyment of the thing, is called *mere* or *naked ownership*.

824.

ART. 670. There is also a kind of ownership in incorporeal things. Thus, the usufructuary has the ownership of his right of usufruct.

824, 775, 950, 978.

ART. 671. The products of talent or genius, are the property of their authors.

Property of this character shall be governed by special laws.

83 and 326 of law 153 of 1887.

ART. 672. The use and enjoyment of chapels and cemeteries, situated on possessions of private individuals and their appurtenances, shall pass together with them and with the ornaments, vases, and other objects belonging to such chapels or cemeteries, to the persons who successively acquire the possessions upon which they are situated, unless it be otherwise provided by testament or by an act *inter vivos*.

ART. 673. Methods of acquiring ownership are occupation, accession, tradition, succession *mortis causa*, and prescription.

The acquisition of ownership by the last two methods, will be treated of in the Book entitled *Of succession mortis causa*, and at the end of this Code.

765, 685, 713, 740, 754, 756.

TITLE III.

Of Property of the Union.

ART. 674. *Property of the Union* is that whose ownership is vested in the Republic.

If in addition the use thereof belongs to all the inhabitants of a Territory, such as that of streets, squares, bridges and roads, it is called *property of the Union for public use* or *public property of the Territory*.

The property of the Union whose use does not belong generally to the inhabitants, is called *property of the Union*, or *fiscal property*.

ART. 675. All lands situated within the territorial limits which have no other owner, are the property of the Union.

ART. 676. Bridges and roads constructed at the expense of private persons, upon lands belonging to them, are not property of the Union, even though the owners permit their use and enjoyment to all the inhabitants of a Territory.

The same applies to any other constructions made at the expense of private individuals upon their own lands, even though their use be public, by permission of the owner.

2520.

ART. 677. Rivers and all waters running along natural channels are the property of the Union, of public use in the respective Territories.

Running waters rising and dying upon the same tenement are excepted; their ownership, use and enjoyment belong to the riparian owners, and pass together with the banks to the heirs and other successors of the owners.

ART. 678. The use and enjoyment which for transit, irrigation, navigation and any other licit purposes, private individuals have in the streets, squares, bridges and public roads, in rivers and lakes, and generally in all the property of the Union of public use, shall be subject to the provisions of this Code and such others on the subject as may be contained in the laws.

ART. 679. No one can build, without special permission from a competent authority, any work upon the streets, squares, bridges, shores, fiscal lands and other places which are the property of the Union.

ART. 680. The columns, pillars, approaches, porches, and any other constructions, which serve for the comfort or ornamentation of buildings, or form a part thereof, cannot occupy any space, no matter how small it be, of the surface of streets, squares, bridges, roads and other places which are the property of the Union.

Buildings with regard to which a contrary practice has been tolerated, shall be subject to the provisions of this article, if rebuilt.

ART. 681. In buildings constructed upon a line with the streets or squares, there cannot be, below the height of three meters, any windows, balconies, outlooks or other works which project more than one-half a decimeter beyond the vertical plane of the building line; nor can there be any above said distance which project beyond said vertical plane horizontally more than three decimeters.

The provisions of this article shall apply to the reconstruction of said buildings.

ART. 682. Private individuals who have obtained permission from the proper authority to construct works upon the property of the Union, have only the use and enjoyment thereof, and not the ownership of the soil.

Upon the works being abandoned or the time for which the permission was granted having expired, such works and the soil, by operation of law, return to the use and exclusive enjoyment of the Union, or to the use and general enjoyment of the inhabitants, as the sovereign authority may prescribe. But this does not apply if the ownership of the soil has been expressly granted by the Union.

ART. 683. No ditches can be dug diverting the water of rivers for any industrial or domestic purpose, except in accordance with the respective laws.

918.

ART. 684. Notwithstanding the provisions of this Chapter, and those contained in that on *Accession*, regarding the ownership of the Union over rivers, lakes, and islands, the rights acquired by private individuals therein in accordance with legislation prior to this code shall subsist.

TITLE IV.

Of Occupancy.

ART. 685. By *occupancy* the ownership is acquired of things which belong to nobody, and the acquisition of which is not prohibited by the laws or by International law.

673.

ART. 686. Hunting and fishing are kinds of occupancy, by which the ownership of wild animals is acquired.

ART. 687. *Wild or savage animals* are those which live naturally free and independent of man, such as wild beasts and fish; *domestic*, those which belong to species which live ordinarily under the dependency of man, such as hens and pigeons; and *domesticated*, those which, notwithstanding that they are wild by nature, have become accustomed to domesticity, and recognize in a certain manner the ascendancy of man.

The last named, as long as they retain the habit of returning to the protection or dependency of man, follow the rule of domestic animals, and when they lose this habit, they again return to the class of wild animals.

ART. 688. Hunting can be done only on one's own lands, or on the lands of another, with the permission of the owner.

But such permission shall not be necessary, if the lands should not be enclosed, nor planted or cultivated, unless the owner shall have forbidden hunting thereon expressly, and given notice of the prohibition.

ART. 689. If anyone should hunt upon the property of another without the permission of the owner, when, under the law, he is obliged to obtain it, what he has killed shall belong to the owner, whom he shall in addition compensate for all damages.

ART. 690. Fishing may be done freely in the rivers and lakes of public use.

ART. 691. It shall not be lawful for those fishing in the rivers or lakes to make any use of the buildings and cultivated lands on the banks, nor to pass through fences.

898.

ART. 692. The provisions of article 689 apply to fishing in the waters of another.

ART. 693. It shall be understood that the hunter or fisher takes possession of the wild animal and makes it his own from the instant he has seriously wounded it, so that it can no longer escape easily, and as long

as he continues to pursue it; or from the instant the animal has fallen into his traps or nets, provided that he has set them up or located them in a place where it is lawful for him to hunt or fish.

If the wounded animal enter upon the lands of another where it is not lawful to hunt without the permission of the owner, the latter may appropriate it.

ART. 694. It is not lawful for a hunter or fisherman to pursue a wild animal, which is already being pursued by another hunter or fisherman; should he do so without his consent, and take possession of the animal, the other may claim it as his own.

ART. 695. Wild animals belong to the owner of the cages, aviaries, warrens, hives, ponds or corrals in which they may be confined; but as soon as they recover their natural liberty, any person may take possession of them and make them his own, provided that the owner is not actually pursuing them, holding them in sight, and the provisions of article 688 are not otherwise violated.

ART. 696. Bees abandoning the hive and lighting upon a tree which is not the property of the owner of the latter, return to their natural liberty, and anyone may take possession of them and of the combs made by them, provided that it be not done without the permission of the owner on another's or enclosed or cultivated lands, or against his prohibition on other lands; but the owner of the hive cannot be forbidden from pursuing the fugitive bees on lands which are neither enclosed nor under cultivation.

ART. 697. Pigeons leaving a dovecote and seeking another, shall be understood to be lawfully occupied by the owner of the latter, provided that he has not availed himself of any artifice to attract and accustom them to remain.

In such case he shall be obliged to compensate all damages, including the restitution of the animals, if the owner should require it, and, otherwise, to pay their price.

ART. 698. Domestic animals are subject to ownership.

The owner retains this ownership in fugitive domestic animals, even though they may have entered upon the property of another; except in so far as the laws and regulations of rural or urban police should provide otherwise.

ART. 699. The *finding* or *recovery* of a thing is a species of occupation by which he who finds an inanimate thing, belonging to nobody, acquires its ownership, by taking possession of it.

In this manner is acquired the ownership of stones, shells, and other substances cast up by the sea, and which show no indications of a prior ownership. In the same manner are acquired things whose ownership is abandoned by their owner, such as coins thrown away to be kept by the first occupier.

Things thrown into the sea by navigators for the purpose of lightening a vessel, are not considered as abandoned by their owners.

ART. 700. The discovery of a treasure is a species of discovery or find.

Treasure is called the money or jewels or other precious effects which, having been manufactured by man, have been buried or hidden for a long time, without there being any remembrance or indication of their owner.

ART. 701. Treasure found upon the property of another shall be divided into equal parts between the owner of the land and the person who may have made the discovery.

But the latter shall not be entitled to his share, unless the discovery be a chance one, or when the treasure has been sought with the permission of the owner.

In other cases or when the owner of the land and the discoverer are one and the same person, all the treasure shall belong to the owner of the land.

845, 1787.

ART. 702. Any person may request the owner of an estate or of a building for permission to dig in the soil to remove money or jewels which he assures belong to him or to be hidden there; and if he should indicate the spot where they are hidden and give proper security that he will establish his right thereto, and that he will make good to the owner any damage to the estate or building, the latter cannot refuse permission, nor object to the removal of said money or jewelry.

ART. 703. Should the right to said money or jewelry not be established, it shall be considered either as lost property, or as treasure found upon the property of another, according to the antecedents and indications.

In the latter case, after having deducted the cost or expenses, the treasure shall be divided equally between the discoverer and the owner of the soil; but the latter cannot demand compensation of damages, unless he renounce his share.

ART. 704. He who shall find or discover a thing which by its nature shows that it had previously belonged to some one, or that by its marks or vestiges indicates that it has been in such former ownership, he must place it at the disposal of such owner, if he be known.

If the owner of the thing found or discovered should not be known or should not appear, the thing shall provisionally be considered vacant or unclaimed.

ART. 705. The person who, in the case of the preceding article should omit to deliver to the owner, if known, or, if not known, to the proper authority, the movable thing found, within thirty days, following the finding thereof, shall be criminally prosecuted, apart from the liability which may lie by reason of the prejudice which his omission may cause.

ART. 706. *Vacant* property is immovable property situated within the respective Territory, for the account of the Nation, without an apparent or known owner; and *unclaimed* (*mostrencos*), movable property in the same condition.

ART. 707. Vacant property and the unclaimed property of the Territories belong to the Union.

The alienation and application of such property shall be governed by the provisions of the Fiscal Code.

ART. 708. If the owner of a thing which has been considered vacant or unclaimed, should appear, before the Union shall have alienated it, it shall be restored to him, upon the payment of the expense of securing it, of its preservation and other incidental expenses and the sum which, under the law, may be due the person who found or gave notice of the vacant thing.

If the owner should have offered a reward for the discovery, the person having given notice shall choose between the amount fixed by law and the reward offered.

ART. 709. After the thing shall have been alienated, it shall be considered as irrevocably lost to the owner.

ART. 710. Flotsam and jetsam saved, shall be restored by the authorities to the persons interested, upon the payment of the expenses and the salvage fees.

If no interested persons should appear within thirty days after the shipwreck, the property salvaged shall be declared unclaimed, after the proper proceedings.

ART. 711. The proper authority shall fix, according to the circumstances, the salvage fees, which shall never exceed one half the value of the property.

But if the salvage of the flotsam and jetsam should be conducted under the orders and direction of the public authorities, they shall be returned to the owners, upon the payment of the expenses incurred, without any salvage fees.

ART. 712. The proceedings for the declaration of property being vacant or unclaimed, are the subject of the Judicial Code of the Union.

TITLE V.

Of Accession.

ART. 713. Accession is a mode of acquiring by which the owner of a thing becomes that of what it produces, or of that which becomes united to it. The products of things are natural or civil fruits.

673.

CHAPTER I.

Of the Accessions of Fruits.

ART. 714. *Natural* fruits are those which nature produces, assisted or not by human industry.

ART. 715. Natural fruits are called *hanging*, as long as they adhere to the thing which produces them, such as plants which are rooted in the soil, or the products of plants as long as they have not been separated therefrom.

Gathered natural fruits are those which have been separated from the thing that produced them, such as cut timber, harvested fruits and grains, etc., and are said to be *consumed* when they have been really consumed, or alienated.

624, 840.

ART. 716. The natural fruits of a thing belong to the owner thereof; without prejudice to the rights established by the laws, or by an act of man, in a *bona fide* possessor, a usufructuary, a lessee.

Hence, the vegetables which the earth produces spontaneously or by cultivation, and the fruits, seeds and other products of vegetables, belong to the owner of the land.

Thus also, the hides, wool, horns, milk, brood and other products of animals, belong to the owner of the latter.

1000.

ART. 717. *Civil* fruits are rents, leases, rent charges (*censos*), the interest on demandable capitals or of life annuities.

Civil fruits are called *hanging* or *pending* while they are due; and *acquired*, after they have been collected.

624, 840.

ART. 718. Civil fruits belong also to the owner of the thing producing them, in the same manner and with the same limitations as natural fruits.

CHAPTER 2.

Of Accessions of the Soil.

ART. 719. *Alluvion* is the increase which the bank of a river or lake receives by the slow and imperceptible withdrawal of the waters.

ART. 720. The alluvion belongs to the riparian estates within their respective lines of demarcation, extended directly to the water; but in open ports it shall belong to the Union.

The soil which the water alternately covers and uncovers, in its periodical rises and falls, forms part of the bed or channel, and does not therefore accrue to the contiguous estates.

ART. 721. If a prolongation of the aforementioned lines of demarcation should result in their crossing each other before reaching the water, the triangle formed by them and the water's edge, shall accrue to the two lateral estates; a straight line dividing it into two equal parts drawn from the point of intersection to the water, shall be the dividing line between the two estates.

ART. 722. The ownership in land which by a flood or other natural violent force, is taken from one place to another, is retained by the owner thereof, for the sole purpose of taking it; but if he does not claim it within the next year, it shall become the property of the owner of the place to which it was carried.

ART. 723. If a tenement shall have been inundated, the land which is restored by the waters within the next ten years shall return to its former owners.

867.

ART. 724. If a river changes its course, the riparian owners may, with the permission of the proper authorities, construct the works necessary to return the waters to their original channel, and that part of the latter which remains permanently dry, shall accrue to the contiguous tenements, as the alluvion does in the case of article 720.

If the riparian owners of one side agree with those of the other, a longitudinal line shall divide the new territory into two equal parts, and each of the latter shall accrue to the contiguous tenements, as in the case of the said article.

ART. 725. If a river divides itself into two branches, which do not later unite, the parts of the channel which the water may leave uncovered, shall accrue to the contiguous tenements, as in the case of the preceding article.

ART. 726. With regard to the new islands which are not to belong to the Union, the following rules shall be observed :

1. The new island shall be considered as a part of the channel or bed as long as it is alternately covered and uncovered by the water in its periodical rises and falls, and shall not accrue to the riparian estates in the meantime.

2. The new island formed by a river which divides into two branches which later join again, does not change the former ownership of the lands comprised therein; but the new land left uncovered by the river, shall belong to the contiguous tenements as in the case of article 724.

3. The new island formed in the channel of a river, shall accrue to the tenements on that of the two banks nearest the entire island; each tenement taking the part comprised between its respective lines of demarcation extended directly to the island and over its surface.

If the entire island should not be nearer one bank than the other, it shall accrue to the tenements on both banks; each tenement receiving the part comprised between its respective lines of demarcation extended directly to the island and over its surface.

The parts of the island which by virtue of these provisions should belong to two or more tenements, shall be divided into equal parts between the said tenements.

4. In the distribution of a new island, any island or islands which may have existed there formerly, shall be ignored; and the new island shall accrue to the riparian estates, as if it alone existed.

5. The owners of an island formed by the river, acquire the ownership of all that accrues thereto by alluvion, no matter what distance it may be from the bank, excepting new land uncovered by the waters.

6. The second paragraph of the third rule above, shall apply to a new island formed in a lake; but estates whose shortest distance from the island exceeds one-half the diameter of the latter, measured in the direction of said distance, shall not participate in the division of the land formed by the waters.*

* The first paragraph of this article is drafted in the Chilean Code as follows: "As to the new islands which are not to belong to the State according to art. 597, the following rules shall be observed. . . ."

Art. 597 of said Code is as follows:

"The new islands formed in the territorial waters (*mar territorial*) or in rivers and lakes which can be navigated by vessels of more than one hundred tons, shall belong to the State."

As the Colombian legislator suppressed this article (597) it appears that under the Civil Code it cannot be ascertained what are the new islands "which are not to belong to the Union." (*Angarita*.)

CHAPTER 3.

Of the Accession of One Movable to Another.

ART. 727. *Adjunction* is a kind of accession, and takes place when two movables belonging to different owners, are united to each other, but in such manner that they can be separated and each of them subsist after separation; as when the diamond of one person is set in the gold of another, or a mirror is placed in another's frame.

ART. 728. In cases of adjunction, without the knowledge of one party nor bad faith on the part of the other, the ownership of the accessory thing shall accede to the ownership of the principal one, with the charge of paying its value to the owner of the accessory part.

ART. 729. If of two united things, one is of much greater estimation than the other, the first shall be considered as the principal one, and the latter as the accessory one.

A thing which has for the owner a special or sentimental value (*valor de afección*) shall be considered as the more valuable.

ART. 730. If there be not so much difference in the estimation, that of the two things which serves for the use, ornament or supplement of the other, shall be considered as accessory.

ART. 731. In cases in which none of the preceding rules can be applied, that of the greatest volume shall be considered as the principal one.

ART. 732. Another kind of accession is that in specification* which takes place when of a substance belonging to one person, another person makes any work or article whatever, as if of another's grapes wine is made, or a cup out of another's silver, or a boat out of another's wood.

If the act be not done knowingly by the one party, and there be not bad faith in the other, the owner of the substance shall have a right to demand the new species upon paying for the making thereof.

Provided that unless in the work or article, the price of the new species is much more valuable than that of the material, as when a painting is made on another's canvas, or a statue from another's marble; as in such case the new species shall belong to its maker (*especificante*), and the owner of the material shall be entitled only to compensation for damages.

If the material of which the article is made, belongs in part to another and in part to the person who made it or had it made, and the two parts cannot be separated conveniently, the species shall belong in common to the two owners; to one in proportion to the value of his material, and to the other in proportion to the value of his material and workmanship.

* See La. Civil Code, 525 [517], *et seq.* Also Mackeld. Rom. Law, §271.

ART. 733. If a thing be formed by the *admixture* of dry or liquid substances, belonging to different owners, without the knowledge of one party and without bad faith on the part of the other, the ownership of the thing shall belong to said individuals *pro indiviso*, in proportion to the value of the material belonging to each.

Provided that unless the value of the material belonging to one of them should be considerably higher, as in such case the owner thereof shall have a right to demand the thing produced by the admixture and pay the value of the remaining material.

ART. 734. In all cases in which the owner of one of the two substances united cannot easily replace it by another of the same quality, value and suitability, and the former can be separated without injury to the rest, the owner thereof, without whose knowledge the union shall have been made, may request its separation and delivery, at the cost of the person who made use thereof.

ART. 735. In all cases in which the owner of a substance of which use has been made without his knowledge, has a right to the ownership of the thing in which it has been employed, he shall have a similar right to demand that in place of said substance a similar amount of the same nature, quality and suitability, or its value in money, be given him.

ART. 736. He who may have had knowledge of the use which another person was making of his material, shall be presumed to have consented thereto and shall only be entitled to the value thereof.

66.

ART. 737. He who shall have made use of material without the knowledge of the owner, and without just cause of error, shall be subject in all cases to the loss of his work and material, and be obliged to pay the excess value of the damages incurred by the owner; aside from the criminal action which may lie, when he shall have acted knowingly

If the value of the work should notably exceed that of the material, the provisions of this article shall not apply; unless the act was performed knowingly.

CHAPTER 4.

Of the Accession of Movables to Immovables.

ART. 738. If building is done with materials belonging to another upon one's own ground, the owner of the ground shall become the owner of the materials by the act of their incorporation in the construction; but he shall be obliged to pay the owner of the materials their just price or return to him an equal amount of the same nature, quality and suitability.

If on his part there shall not have been any just cause of error, he shall be obliged to make compensation for the damages incurred, and if he shall have proceeded knowingly, he shall also be subject to the respective criminal action; but if the owner of the materials shall have had knowledge of the use being made of them, the provisions of this article only shall apply.*

The same rule applies to one who plants or sows in his own soil, the plants or seeds of another.

As long as the materials are not incorporated in the construction or the plants placed in the soil, the owner may recover them.

1613.

ART. 739. The owner of land upon which another person, without his knowledge, shall have built, planted or sowed, shall have a right to make the building, planting or sowing his own, upon the compensation prescribed in favor of possessors in good or bad faith in the Title *Of Revendication*, or to oblige the person who built or planted to pay him a just price for the land with legal interest for all the time he may have had possession thereof, and the one who sowed to pay him the rental and indemnify him for damages.

If the building, planting or sowing shall have taken place with the knowledge and consent of the owner of the land, he shall be obliged, in order to recover it, to pay the value of the building, planting or sowing.

961 *et seq.*, 1613.

* In the Code of Chile the latter part of this paragraph is as follows: “. . . the provisions of the preceding paragraph only shall apply,” and not, “of this article,” as this Code incorrectly states.

TITLE IV.

Of Tradition.*

CHAPTER I.

General Provisions.

ART. 740. *Tradition* is a mode of acquiring the ownership of things, and consists in the delivery which the owner makes of them to another, there being on the one part the power and intention of transferring the ownership, and on the other the capacity and intention of acquiring it.

What is said of ownership applies to all other real rights.

754, 756, 665.

ART. 741. The person who by the tradition transfers the ownership of the thing delivered by him, is called the *transferrer* (*tradente*), and the person who by the tradition acquires the ownership of the thing received by him or in his name, the *transferee* (*adquirente*).

The mandataries or legal representatives of the owner may deliver or receive in his name.

In the forced sales held by virtue of a judicial decree on the petition of a creditor, at public auction, the person whose ownership is transferred is the transferrer, and the Judge his legal representative.

The tradition made to or by a duly authorized mandatary, is understood to have been made to or by the respective principal.

62, 1637, 1505, 2186.

ART. 742. In order that the tradition be valid, it must be voluntarily made by the transferrer or by his representative.

A tradition which was invalid at the beginning on account of its having been made without the will of the transferrer or of his representative, is validated retroactively by the ratification of the person who has the power to alienate the thing as owner or as representative of the owner.

743 par. 2, 767, 1874, 2186 par. 2.

ART. 743. The tradition, in order to be valid, requires also the consent of the transferee, or of his representative.

But the tradition which was in the beginning invalid, on account of the lack of such consent, is validated retroactively by the ratification.

767.

* See La. Civil Code, 2477. [2452.]

ART. 744. In order that the tradition made by and to mandataries or legal representatives be valid, it is also necessary that such mandataries or legal representatives act within the powers of their mandate or legal representation.

766 No. 3, 1505, 2186.

ART. 745. In order that a tradition be valid, a title transferring ownership is necessary, such as a bill of sale, exchange, donation, etc.

It is necessary, in addition, that the title be valid as to the person to whom the transfer is made. Hence, an irrevocable deed of donation does not transfer the ownership between spouses.

765, 1196 par. 3.

ART. 746. It is also necessary for the validity of the tradition that no error be committed as to the identity of the species to be delivered, or as to the person to whom the delivery is made, nor as to the title.

If an error be committed in the name only, the tradition is valid.

1508 to 1512, 1116.

ART. 747. An error in the title invalidates the tradition, as when one of the parties only supposes it to be a title transferring ownership, or when one of the parties has the intention of making the delivery as a *commodatum*, and the other party has the intention of receiving as a donation, or when both parties believe the instrument to be one transferring ownership, but different, as when one party believes it a *mutuum* and the other a donation.

ART. 748. If the tradition be made through mandataries, or legal representatives, the error of the latter invalidates the tradition.

ART. 749. If the law requires special formalities for the alienation, the ownership is not transferred without them.

1500, 1857 par. 2.

ART. 750. The tradition may transfer the ownership under a suspensive or resolutive condition, provided it be stipulated.

The delivery having been made by the vendor, the ownership of the thing sold is transferred, even though the price shall not have been paid, unless the vendor shall have reserved the ownership until payment is made, or until a condition has been performed.

1547, 1548, 1931, 1933, 1934, 1935.

ART. 751. The tradition of all that which is due may be demanded,

provided there be no period pending for its payment; unless a judicial decree to the contrary should issue.

1605.

ART. 752. If the transferrer be not the real owner of the thing delivered by him or in his name, no rights are acquired by means of the tradition, except the transferable ones of the transferrer in the thing delivered.

But if the transferrer afterwards acquires the ownership, it shall be understood that the latter was transferred at the time of the tradition.

833 par. 3, 851, 1168, 1633, 2004, 2441, 767, 779 par. 2, 1874, 1875, 1931, 753.

ART. 753. The tradition gives the transferee, in the manner and cases prescribed by law, the right to acquire by prescription the ownership which the transferrer lacked, even though the transferrer did not have such right.

2518, 2521, 2526 to 2529, 2531 to 2533.

CHAPTER 2.

Of the Tradition of Corporeal Movables.

ART. 754. The tradition of a corporeal movable thing must be made by one of the parties signifying to the other that he transfers the ownership, such transfer being effected in one of the following manners:

1. By permitting him to take material possession of a present thing.
2. By showing it to him.
3. By delivering to him the keys of the granery, warehouse, chest or any place in which the thing is kept.
4. By one agreeing to deliver the thing to the other in a place agreed upon.

5. By the sale, donation or other title of alienation granted to him who has the movable thing as usufructuary, lessee, bailee, depositary, or any other title which does not transfer ownership; and mutually by the mere contract in which the owner constitutes himself usufructuary, bailee, lessee, etc.

673.

ART. 755. When, with the permission of the owner of an estate, stones, hanging fruits, or other things which form a part of the estate are taken, the tradition takes place at the moment of the separation of these objects.

He to whom the fruits of a vineyard or of sown or planted land are owed, may enter thereon to take them, at a day and hour fixed by agreement with the owner.

715.

CHAPTER 3.

Of Other Kinds of Tradition.

ART. 756. The tradition of the ownership of real property shall be effected by the recording of the title in the Office of Registration of public instruments.

The tradition of rights of usufruct and use constituted in real property, and those of habitation or mortgage, shall be effected in the same manner.

673, 757 to 760, 796 par. 2, 826, 871, 1457, 1857 par. 2, 2652 par. 1, 1873, 785, 789, 749, 1500, 2526, 2652, *et seq.* 93 last par. and 106 of law 153 of 1887.

ART. 757. At the moment inheritance is deferred, the possession thereof is conferred by operation of law upon the heir; but this *legal* possession does not empower him to dispose of an immovable in any manner whatsoever until:

1. The issue of the judicial decree giving *actual* possession.
2. The registration of such judicial decree and of the titles conferring the ownership.

783, 1013.

ART. 758. Whenever by a final judgment ownership or any of the rights mentioned in the preceding articles of this chapter shall be recognized as acquired by prescription, such judgment shall serve as a title, after its registration in the proper office or offices.

2534.

ART. 759. Titles transferring ownership which require registration, shall not give or transfer the actual possession of the respective right until the registration shall have been made as prescribed in the Title *Of the Registration of Public Instruments*.

2673, 2674.

ART. 760. The tradition of a right of servitude shall be effected by a public instrument, duly recorded, in which the transferrer expresses that he constitutes it and the transferee that he accepts it; such instrument may be the same as that embodying the principal act or contract to which the constitution of the servitude is accessory.

1760.

ART. 761. The tradition of the personal rights which one person assigns to another, shall be effected by the delivery of the title, made by the assignor to the assignee.

1185 par. 2, 1959, *et seq.*, 1634 par. 2 33 of law 57 of 1887.

TITLE VII.

Of Possession.

CHAPTER I.

Of Possession and its Different Kinds.

ART. 762. Possession is the seizin of a determined thing with intention of ownership, whether the owner of the person claiming to be such, has the thing himself, or by another person in his place and name.

The possessor is considered the owner, as long as another person does not establish his ownership.

669, 775, 786, 785, 787 to 792, 2195, 2194, 66.

ART. 763. A thing may be possessed under various titles.

ART. 764. Possession may be regular or irregular.

Regular possession is that arising from a just title and acquired in good faith, even though the good faith should not subsist after the possession has been acquired.

Consequently, one may be a regular possessor and a possessor in bad faith, and, *vice versa*, a *bona fide* possessor may be an irregular one.

If the title be one transferring ownership, tradition is also necessary.

The possession of a thing, with the knowledge and consent of the person who bound himself to deliver it, shall cause a presumption of tradition; unless it were necessary to effect the latter by the registration of the title.

770, 2528.

ART. 765. A just title is one which constitutes or transfers ownership. Occupancy, accession and prescription are constitutive of ownership.

Titles transferring ownership are those which by their nature serve to transfer it, such as bills of sale, exchanges, donations *inter vivos*.

Decrees of adjudication in proceedings for division, and legal acts of partition, belong to this class.

Judicial decisions on rights in litigation do not serve as a new title to legalize the possession.

Transactions (or compromises) in so far as they are limited to the recognition or declaration of pre-existing rights, do not form a new title; but when they transfer the ownership of an object not the subject of dispute, they constitute a new title.

673, 745, 2483.

ART. 766. The following are not just titles:

1. Forged ones, that is to say, those not really executed by the person alleged.

2. Those conferred by persons in the capacity of mandataries or legal representatives, without being so.

3. Those which contain any defect avoiding them, as an alienation which requires authorization by a legal representative or by a judicial decree, and has not been so authorized.

4. Those merely putative, as that of an apparent heir who is not in reality an heir; that of the legatee, whose legacy has been revoked by a subsequent testamentary act, etc.

Nevertheless, the putative heir to whom actual possession may have been given by a judicial decree, shall secure a just title by the decree, as a testamentary act judicially recognized shall serve as a just title to the putative legatee.

744, 1507, 2186, 1326.

ART. 767. The validation of a title which was previously void, by a ratification, or by any other legal means, retroacts to the date upon which the title was conferred.

742 par. 2, 743 par. 2, 1874, 1931, 2186 par. 2, 752 par. 2.

ART. 768. Good faith is the conscience of having acquired the ownership of a thing by legal means, exempt of fraud and any other defect.

Hence, in titles transferring ownership, good faith presumes the idea of having received the thing of one who had the power to alienate it and that there was no fraud or other vice in the act or contract.

A just error in a matter of fact, is not opposed to good faith.

But an error in a matter of law constitutes a presumption of bad faith, which does not admit of proof to the contrary.

1508 to 1512, 9, 2315, 2317, 66 par. 4.

ART. 769. Good faith is presumed, excepting in the cases in which the law establishes a different presumption.

In all other cases the bad faith must be proved.

66 pars. 2 and 3, 109 subdiv. 5, 964 par. 3, 2351 subdivisions 2 and 3, 1516.

ART. 770. *Irregular* possession is that which lacks one or more of the requisites prescribed in article 764.

2528, 2531 No. 1.

ART. 771. Defective (vicious) possessions are violent and clandestine.

ART. 772. *Violent* possession is that which is acquired by force.

The force may be present or imminent.

1513, 1514.

ART. 773. He, who in the absence of the owner shall take possession of a thing, and upon return of the owner shall repel him, is also a violent possessor.

790, 984, 982.

ART. 774. The defect of violence is present, whether it has been employed against the true owner of the thing, or against him who possessed it without being the owner, or against him who held it in the place or in the name of another.

It is the same thing if the violence be employed by a person or by his agents, and that it be employed with his consent, or that after use thereof it be expressly or impliedly ratified.

Clandestine possession is that exercised by concealing it from those who have a right to object thereto.

ART. 775. Mere tenancy is that exercised over a thing, not as owner, but in the place or name of the owner. The pledge creditor, sequestrator, usufructuary, user, he who has the right of habitation, are mere tenants of the thing pledged, sequestered, or whose usufruct, use or habitation may belong to them.

What is said applies generally to all who hold a thing recognizing the ownership of another.

762, 777, 2418, 2419, 665, 670, 978, 984, 1988, 2342.

ART. 776. The possession of incorporeal things is susceptible of the same qualities and vices as the possession of a corporeal thing.

664.

ART. 777. A simple lapse of time does not convert mere tenancy into possession.

2531, rule 3, condition 2.

ART. 778. Whether one succeeds under a universal or singular title, the possession of the successor begins at the time thereof; unless he shall desire to add that of his predecessor to his own; but in such case he appropriates it together with its qualities and vices.

One's own possession may be added in the same terms to that of an uninterrupted series of predecessors.

779, 1034, 2521.

ART. 779. Each of the participants in a thing which was possessed *pro indiviso*, shall be understood to have possessed exclusively the part which he may receive in the division, throughout the entire time of the duration of the indivision.

He may, therefore, add such time to that of the exclusive possession, and the alienations which may have been made by himself of the thing in common, and the real rights which he may have placed thereon, shall subsist upon said part if it shall have been included in the alienation or encumbrance.

But if what was alienated or encumbered extends to more, the alienation or encumbrance shall not subsist against the will of the respective grantees.

2525, 1401, 2442, 752.

ART. 780. If the possession has begun under one's own name, it shall be presumed that this possession has continued to the moment when it is pleaded.

If the possession was begun in the name of another, the continuation of the same order of things shall likewise be presumed.

If anyone shall prove that he had former possession, and actually possesses, the possession in the intermediate time is presumed.

66, 792, 2522 to 2525.

ART. 781. Possession may be taken not only by one who desires to acquire it for himself, but also by his mandatary, or by his legal representatives.

1505 to 1507, 784, 782, 2158, 62.

CHAPTER 2.

Of Modes of Acquiring and Losing Possession.

ART. 782. If a person takes possession of a thing, in the stead or name of another of whom he is the mandatary or legal representative, the possession of the principal begins at the same instant, even though it were without his consent.

If he who takes the possession in the name of another person is not his mandatary or representative, such person shall not possess except by virtue of his knowledge and acceptance; but his possession shall retroact to the moment it was taken in his name.

781, 1505 to 1507.

ART. 783. The possession of an inheritance is acquired at the moment it is deferred, even though the heir be ignorant thereof.

He who validly repudiates an inheritance, is understood as never having possessed it.

757, 1013 par. 2.

ART. 784. Those who cannot freely administer their property, do not require any authorization to acquire possession of a movable thing, provided that intent and material or legal seizure be present; but they cannot exercise the rights of possession without the proper authority.

Insane persons and infants are incapable of acquiring possession by their will, whether for themselves or for others.

480, 1636.

ART. 785. If the thing is of those whose tradition must take place by inscription upon the register of public instruments, no one can acquire the possession thereof, except by this means.

756.

ART. 786. The possessor retains the possession, even though he transfer the seizin of the thing, giving it in lease, *commodatum*, pledge, deposit, usufruct, or under any other title which does not transfer ownership.

762, 775, 670, 765 par. 3.

ART. 787. The possession of a thing ceases when another takes it with the intention of making it his own, excepting in the cases which the law expressly excepts.

790, 789 par. 2, 791, 792, 957.

ART. 788. The possession of a movable thing is not understood to be lost while it is in the power of the possessor, even though the latter temporarily ignores its whereabouts.

ART. 789. In order that registered possession may cease, it is necessary that the record be cancelled, either by the will of the parties or by a new record in which the registered possessor transfers his right to another, or by judicial decree.

As long as the record subsists, he who obtains the thing which is the subject-matter of the record, does not acquire the possession thereof nor does he put an end to the existing possession.

791 par. 2, 980, 2526.

ART. 790. If a person, claiming to be the owner, violently or clandestinely takes possession of an immovable, the title of which is not of record, he who had the possession loses it.

787, 789 par. 2, 984.

ART. 791. If he who has the thing in the place and name of another, usurps it, proclaiming himself the owner thereof, the possession is not lost on the one side, nor acquired on the other, unless the usurper alienates the thing in his own name. In such case the person to whom it may be alienated acquires the possession of the thing and puts an end to the previous possession.

Nevertheless, if he who has the thing in the place and name of a registered possessor, passes himself as the owner thereof and alienates it, the possession is not lost on one side, nor is it acquired on the other, without the proper record.

787, 789 par. 2, 1871.

ART. 792. He who legally recovers the lost possession, shall be understood to have had it during the intermediate time.

66, 780 par. 3, 864, 2523.

TITLE VIII.

Of Limitations of Ownership and Primarily of Fiduciary Property.

ART. 793. Ownership may be limited in various ways:

1. By reason of having to pass to another person by virtue of a condition.

799.

2. By the charge of a usufruct, use or habitation to which a person may be entitled in things belonging to another.

3. By servitudes.

ART. 794. *Fiduciary property* is called that which is subject to a charge of passing to another person upon the fulfillment of a condition.

The constitution of the fiduciary property is called a *fidei commissum*.*

This name is also given to the thing constituted fiduciary property.

The transfer of the property to the person in whose favor the *fidei commissum* has been established, is called *restitution*.

1145, 1677 No. 8.

ART. 795. A *fidei commissum* can be constituted only upon an entire estate or upon a specific quota thereof, or upon one or more determined objects.

1124.

ART. 796. *Fidei commissa* may be constituted only by an act *inter vivos* contained in a public instrument, or by a testamentary act.

The constitution of every *fidei commissum* which comprises or affects an immovable, must be recorded in the proper register.

1758, 1760, 6 par. 2, 1500, 756, 1308.

ART. 797. The same property may be constituted in usufruct in favor of one person and *fidei commissum* in favor of another.

ART. 798. The *cestui que trust* may be a person who at the time of the creation of the fiduciary property did not exist, but who is expected to come into existence.

ART. 799. A *fidei commissum* always presumes the express or implied

* A species of trust: being a gift of property (usually by will) to a person, accompanied by a request or direction of the donor that the recipient will transfer the property to another, the latter being a person not capable of taking directly under the will or gift. (*Black's Law Dictionary*.)

condition of the existence of the *cestui que trust* or his substitute, at the time of the restitution.

To this condition others may be added jointly or separately.

793 No. 1, 821, 1019, 1143.

ART. 800. Any condition upon which the restitution of a *fidei commissum* depends, and which takes more than thirty years to mature, shall be considered as lapsed, unless the death of trustee be the event upon which the restitution depends.

These thirty years shall be counted from the date of the delation of the fiduciary property.

829, 1145 par. 3, 1539, 1013. 30 of law 153 of 1887.

ART. 801. Stipulations limited to a day certain which are not equivalent to conditions, according to the rules of the Title on Testamentary Assignments, Chapter 3, do not constitute a *fidei commissum*.

1142, 1148.

ART. 802. He who creates a *fidei commissum*, may appoint not only one but two or more trustees, and two or more *cestui que trusts*.

1470, 1471.

ART. 803. The constituent may give the *cestui que trust* the substitutes he may desire, to provide against his ceasing to exist before the restitution, by death or otherwise.

These substitutions may be of different classes, one person substituting the *cestui que trust* in the first place, another taking the place of the first substitute, another that of the second, and so on.

1217, 1218, 1223, 1224.

ART. 804. No substitutes but those expressly designated in the respective act *inter vivos* or testament, shall be recognized.

ART. 805. The constitution of two or more successive *fidei commissa*, so that when a *fidei commissum* is restored to a person the latter acquires it under the charge of eventually restoring it to another, is forbidden.

If they should in fact be created, after the *fidei commissum* shall have been acquired by one of the *cestuis que trustent* appointed, the expectations of the others shall be extinguished forever.

828. 31 par. 2 of law 153 of 1887.

ART. 806. If one or more *cestuis que trustent* in the first place are appointed whose existence is to be awaited in accordance with the provisions

of article 798, the entire *fidei commissum* shall be restored at the proper time to the existing *cestuis que trustent*, and the others shall enter upon the enjoyment thereof as the condition imposed with regard to each shall mature. But upon the expiration of the period fixed in article 800, no further *cestui que trust* shall be entered thereon.

1124 par. 2.

ART. 807. When in the constitution of the *fidei commissum* the trustee shall not be expressly designated, or when for any cause the trustee appointed shall be absent, the condition being still pending, the constituent himself shall fiduciarily enjoy the property, if living, or his heirs, otherwise.

ART. 808. If it should be provided that during the pendency of the condition the fruits be reserved for the person who by virtue of the fulfillment or non-fulfillment of the condition, shall acquire the absolute ownership, he who administers the property shall be a fiduciary holder who shall only have the powers of curators *ad bona*.

575 *et seq.*

ART. 809. If there be two or more fiduciary owners, there shall exist between them the right of accretion, according to the provisions of article 839 regarding usufructs.

ART. 810. Fiduciary property may be alienated *inter vivos* and transmitted *mortis causa*, but in either case with the proviso of maintaining it undivided, and subject to the charge of restitution, under the same conditions as before.

Nevertheless, it shall not be transmissible by testament or *ab intestato*, when the day fixed for the restitution is that of the date of the death of the trustee; and in such case, if the trustee shall alienate it during life, his death shall always determine the date of restitution.

832 par. 2, 1142.

ART. 811. When the constituent shall have given the fiduciary property to two or more persons, according to article 802, or when the rights of the trustee are transferred to two or more persons according to the preceding article, the Judge may, on petition of any of them, entrust the administration thereof to the person giving the best surety of preservation.

ART. 812. If one and the same person should be the trustee of one quota and the absolute owner of the other, he shall exercise over both the rights of a trustee, as long as the property remains undivided; but he may demand the division.

The persons designated in article 820 shall take part therein.

ART. 813. The fiduciary owner has over the species which he may be required to restore, the rights and obligations of a usufructuary, with the modifications indicated in the following articles.

834 *et seq.*

ART. 814. He is not obliged to give surety of preservation and restitution, except by virtue of a decision of the Judge, so ordering it as a precautionary measure, when requested so to do in accordance with the provisions of article 820.

820 par. 2, 834, 872.

ART. 815. He is bound to defray all extraordinary expenditures for the preservation of the thing, including the payment of the debts and mortgages to which it may be subject; but when the time for restitution shall arrive he shall be entitled first to reimbursement by the *cestui que trust* of said expenditures, reduced to the sum which with average intelligence and care they should have reached, and with the following deductions:

1. If they have been expended in material works, such as dikes, bridges, walls, he shall not be reimbursed except to the extent of what they are worth at the time of restitution.

2. If they have been expended in immaterial things, such as the payment of a mortgage or the costs of litigation which he could not have abandoned without endangering the rights of the *cestui que trust*, one-twentieth shall be deducted from what they may have cost, for each year which has elapsed to the day of the restitution; and if more than twenty years shall have elapsed since the expense was incurred, nothing shall be due on this account.

965.

ART. 816. With regard to the imposition of mortgages, servitudes or any other charge, the property held in trust shall be combined with the property of the person living under tutorship or curatorship, and the powers of the trustee with those of the tutor or curator. If said charges shall have been imposed without previous judicial authorization, after an investigation and a hearing of those who, according to article 820, have a right to request the taking of conservatory measures, the *cestui que trust* shall not be obliged to recognize them.

483.

ART. 817. As to the rest, the trustee has the free administration of the property comprised in the *fidei commissum*, and may change the form thereof, but always preserving their integrity and value.

He shall be responsible for the impairment and deterioration due to his act or fault.

ART. 818. The trustee shall not have the right to demand anything by reason of unnecessary improvements, unless he shall have agreed thereon with the *cestui que trust* to whom the restitution is made; but he may oppose as a set off the increase in value which the improvements may have produced in the property, to the extent of the indemnity he may owe.

860.

ART. 819. If by the constitution of the *fidei commissum* the trustee be expressly granted the right of enjoying the property at his pleasure, he shall not be responsible for any impairment.

If, in addition, he be granted the free disposition of the property, the *cestui que trust* shall have the right to demand only that which exists at the time of the restitution.

ART. 820. The *cestui que trust*, during the pendency of the condition has no right over the *fidei commissum*, but the simple expectation of acquiring it.

He may, nevertheless, request such precautionary measures as he may deem advisable, if the property should appear to be in danger, or to become impaired in the hands of the trustee.

The same right shall be had by the legitimate ascendants of the *cestui que trust* who does not as yet exist and whose existence is expected, and the managers or representatives of the corporations and foundations interested.

1138 *et seq.*, 1470, 1471, 1354, 1128, 1542.

ART. 821. A *cestui que trust* dying before the restitution, does not transmit by testament or *ab intestato* any right to the *fidei commissum*, not even the mere expectation, which passes *ipso jure* to the substitute or substitutes designated by the constituent, if there be any.

799, 1019.

ART. 822. The *fidei commissum* is extinguished :

1. By the restitution.
2. By the resolution of the right of the constituent, as when the *fidei commissum* has been constituted on a thing purchased with a clause of resale, and the resale takes place.
3. By the destruction of the thing upon which it is constituted, in accordance with the provisions respecting usufructs in article 866.
4. By the renunciation of the *cestui que trust* before the date of the restitution; without prejudice to the rights of the substitutes.

5. By the absence of the condition or its non-performance in due time.
6. By the confounding of the quality of the only *cestui que trust* with that of the only trustee.

794 last par., 863, 865, 866, 868, 1724.

TITLE IX.

Of the Right of Usufruct.*

ART. 823. The right of usufruct is a real right which consists in the power of enjoying a thing with the charge of preserving its form and substance, and with the obligation of returning it to its owner, if the thing be not a fungible one; or with the obligation of returning an equal quantity or quality of the same kind, or to pay its value, if the thing be fungible.

665, 786, 817, 2200, 2221, 1973.

ART. 824. A usufruct necessarily supposes two co-existing rights, that of the *naked owner*, and that of the *usufructuary*.

It has, therefore, a limited duration, upon the expiration of which it passes to the naked owner and is merged with the ownership.

669 par. 2, 670, 950, 978.

ART. 825. The right of usufruct may be constituted in several manners:

1. By law, as that of the father of a family, in certain property of the child.
2. By testament.
3. By donation, sale or other act *inter vivos*.
4. A usufruct may also be acquired by prescription.

291.

ART. 826. A usufruct which is to be established on real property by an act *inter vivos*, shall not be valid unless it be granted in a registered public instrument.

1758, 756, 796 par. 2, 1500.

* La. Civil Code, 533 [525] to 625 [620].

ART. 827. The establishment of any usufruct under a condition or for any term which suspends its exercise, is forbidden. If it should in fact be established, it shall possess no value.

Nevertheless, if the usufruct be established by testament, and the condition has been fulfilled, or the term expired before the death of the testator, the usufruct shall be valid.

794, 799.

ART. 828. The establishment of two or more successive or alternative usufructs is forbidden.

If they should in fact be established, the subsequent usufructuaries shall be considered as substitutes, in the event of the absence of the preceding ones, before the first usufruct shall have been deferred.

The first usufruct which may be effective shall cause the others to expire; but it shall last only for the time which may have been designated therefor.

805. 31 of law 153 of 1887.

ART. 829. A usufruct may be established for a specific time or for the entire life of the usufructuary.

When in the constitution of the usufruct no time for the duration thereof is fixed, it shall be understood as established for the lifetime of the usufructuary.

A usufruct established in favor of a corporation or foundation of any kind cannot exceed thirty years.

830, 800. 30 of law 153 of 1887.

ART. 830. A condition may be added to a usufruct established for a determinate time, or for the lifetime of the usufructuary, according to the preceding articles, upon the fulfillment of which, it is merged with the ownership.

If the condition be not fulfilled before the expiration of said time or before the death of the usufructuary, as the case may be, it shall be considered as unwritten.

ART. 831. A usufruct may be established in favor of two or more persons to enjoy it simultaneously, equally, or according to the shares determined by the constituent, and in such case the usufructuaries may divide the usufruct among themselves, in any manner that they may see fit.

ART. 832. The naked ownership may be transferred by an act *inter vivos*, and transmitted *mortis causa*.

A usufruct cannot be transferred by testament or *ab intestato*.

810, 865 par. 2, 1213.

ART. 833. The usufructuary is obliged to receive the thing subject to the usufruct in the condition in which it was at the time of the delation thereof, and shall be entitled to indemnification for any impairment or deterioration the thing may have suffered since then, in the power and by the fault of the owner.

851, 1176, 1013.

ART. 834. The usufructuary cannot have the thing subject to the usufruct without having first given sufficient surety for its preservation and restitution, and without an inventory formally made at his cost, such as that required of curators *ad bona*.

But both he who establishes the usufruct and the owner, may relieve the usufructuary from giving surety.

The donor who reserves the usufruct of the thing donated, is not required to give surety.

The surety of the usufructuary of fungible things shall be reduced to the obligation of restoring goods to the same amount and of the same quality, or their value at the time of the restitution.

293, 814, 820 par. 2, 872, 1198 par. 2, 297.

ART. 835. Until the usufructuary shall give the surety required of him, and until the inventory shall be concluded, the owner shall have the administration with the obligation of giving the net value of the fruits to the usufructuary.

834, 837.

ART. 836. If the usufructuary does not furnish the surety required of him, within a reasonable time, fixed by the Judge, on the petition of the owner, the administration shall be awarded to the latter, with the obligation of paying the usufructuary the net value of the fruits, after deducting the sum which the Judge shall fix in advance for the work and care of the administration.

He may also in such case take the thing subject to the usufruct in lease, or borrow the money subject to the usufruct at interest, with the concurrence of the usufructuary.

He may also, if the usufructuary agree thereto, rent the thing subject to the usufruct, and lend the money out at interest.

He may also, if the usufructuary agree, purchase or sell the fungible things, and borrow or lend at interest the proceeds.

The movables comprised in the usufruct, which should be necessary for the personal use of the usufructuary or his family, shall be delivered to him under oath of returning the specific things or their respective values, taking into consideration natural wear and tear.

The usufructuary may at any time, demand the administration, upon furnishing the surety required of him.

ART. 837. The owner shall take care that the inventory be made with the proper details, and cannot later plead its inexactness or incompleteness.

476, 477, 478.

ART. 838. It is not lawful for the owner to do anything whatsoever to prejudice the usufructuary in the exercise of his rights; unless it be with the formal consent of the usufructuary.

If he shall wish to make necessary repairs, the usufructuary may require that they be made at a reasonable time and with the least possible prejudice to the usufruct.

If he transfer or convey the ownership, it shall be subject to the usufruct established thereon, even though this be not expressed.

752, 1986.

ART. 839. If there be two or more usufructuaries, the right of accretion shall exist between them, and the entire usufruct shall last to the expiration of the right of the last of the usufructuaries.

This is understood if the constituent should not have provided that upon the termination of a partial usufruct, it be merged with the ownership.

1206, 1213, 1214, 1222, 809.

ART. 840. The usufructuary of an immovable is entitled to all the natural fruits, including those hanging at the time the usufruct was deferred.

On the other hand, fruits still hanging on the termination of the usufruct, belong to the owner.

950, 715 to 717, 1828, 853, 2342.

ART. 841. The usufructuary of an estate enjoys all the active servitudes established in its favor, and is subject to all the passive servitudes established thereon.

ART. 842. The enjoyment of the usufructuary of a tenement extends to the wooded land, but with the obligation of preserving it as a whole, replacing the trees he may fell, and answering for its impairment, in so far as it does not depend upon natural causes or fortuitous events.

2038.

ART. 843. If the thing subject to the usufruct comprise mines and

quarries being actually worked, the usufructuary may enjoy the proceeds thereof, and shall not be responsible for the consequent diminution of products, provided that the mine or quarry is not rendered useless or impaired through his fault.

ART. 844. The usufruct of a tenement extends to the increase it may receive by alluvion or by other natural accessions.

ART. 845. The usufructuary does not have over the treasure found upon the land which he holds in usufruct, the right granted by law to the owner of the soil.

701, 1787.

ART. 846. The usufructuary of a movable has the right to make use thereof according to its nature and purpose; and upon the termination of the usufruct he is obliged only to return it in the condition it may then be, being responsible only for such losses or impairments as arise from his fraud or fault.

ART. 847. The usufructuary of cattle or herds is obliged to replace the animals which die or are lost, but only with the natural increment of the cattle or herds, unless the death or loss may be charged to his act or fault, as in such case he must compensate the owner.

If the cattle or herd should die in whole or to a great extent, of the effects of an epidemic or other fortuitous event, the usufructuary shall not be obliged to replace the animals lost, and shall comply with his obligation by returning the rest which it may have been possible to save.

64, 1604 par. 3.

ART. 848. If the usufruct be established on fungible things, the usufructuary becomes the owner thereof, and the owner becomes merely a creditor for the delivery of other species of the same quantity and quality or of the value which they may have at the time of the termination of the usufruct.

ART. 849. The civil fruits belong to the usufructuary day by day.

717, 950, 2342.

ART. 850. What has been stated in the preceding articles shall be understood as without prejudice to the agreements which may be made between the naked owner and the usufructuary, or the advantages which on the establishment of the usufruct may have expressly been granted the naked owner or the usufructuary.

ART. 851. The usufructuary is obliged to respect the leases of the thing subject to the usufruct, which the owner may have entered into before the establishment of the usufruct by an act *inter vivos*, or of the death of the person who has established it by testament.

But he succeeds in the collection of the rental or lease price from the beginning of the usufruct.

752, 833.

ART. 852. The usufructuary may give the usufruct in lease, and cede it to whomsoever he pleases, under an onerous or gratuitous title.

The usufruct having been ceded to a third person, the transferrer always remains directly liable to the owner.

But the usufructuary cannot rent nor cede his usufruct, if the constituent thereof should have forbidden it; unless the owner relieve him of the prohibition.

A usufructuary violating this provision, shall lose the right of usufruct.

1546.

ART. 853. Even though the usufructuary had the right of giving the usufruct in lease or ceding it under any title, all the contracts which he may have entered into for this purpose shall be resolved at the end of the usufruct.

The owner, nevertheless, shall allow the lessee or transferee the time he may need for the next harvest of fruits; and during such time he shall substitute the usufructuary in the contract.

2016, 840, 819.

ART. 854. All the ordinary expenses of preservation and cultivation shall be borne by the usufructuary.

ART. 855. The pensions, annuities, and, in general, the periodical charges with which the thing subject to the usufruct may have been encumbered previously, falling due during the usufruct, shall be paid by the usufructuary. It is not lawful for the naked owner to impose new charges thereon to the prejudice of the usufruct.

The usufructuary shall also pay the periodical fiscal and municipal taxes thereon during the usufruct, at whatever time they may have been established.

If, by reason of the failure of the usufructuary to make these payments the owner should do so, or if the thing be alienated or attached, the former must compensate the latter for all damages.

1427 par. 2, 1429, 1796 No. 4.

ART. 856. The cost of extensive works or repairs (*refacciones*), necessary for the preservation of the thing subject to the usufruct, shall be borne by the owner, the usufructuary paying the latter during the term of the usufruct the legal interest on the moneys expended therein.

The usufructuary shall inform the owner of the works and extensive

repairs which are necessary for the preservation of the thing subject to the usufruct.

If the owner should refuse or delay in making these works, the usufructuary may, in order to relieve the thing subject to the usufruct and preserve his usufruct, make them at his cost, and the owner shall reimburse him therefor without interest.

905, 1998.

ART. 857. By extensive works or repairs are understood those which are required at long intervals of time, and which concern the preservation and permanent utility of the thing subject to the usufruct.

1998.

ART. 858. If a building should collapse entirely through age or a fortuitous event, neither the owner nor the usufructuary shall be obliged to rebuild it.

ART. 859. The usufructuary may retain the thing subject to the usufruct until the owner shall make the reimbursements and pay the indemnities incumbent upon him according to the preceding articles.

1995, 2417, 970.

ART. 860. The usufructuary has no right to demand anything for the improvements he may have voluntarily made in the thing subject to the usufruct; but it shall be lawful for him to plead them to offset the value of the deterioration which may be imputed to him, or take away the materials, if they can be separated without injury to the thing subject to the usufruct, and the owner does not allow him what they would be worth after separation.

This is understood without prejudice to the agreements which the usufructuary and the owner may have entered into, with regard to improvements, or to the stipulations on the matter made at the time of the establishment of the usufruct.

818, 965 *et seq.*

ART. 861. The usufructuary is liable not only for his own acts or omissions, but also for the acts of others to which his negligence may have given rise.

Consequently, he is responsible for the servitudes which by his tolerance may have been acquired on the tenement subject to the usufruct, and for the damage which the usurpations committed in the thing subject to the usufruct may have inferred upon the owner, if he had not duly informed the owner thereof, when it was in his power so to do.

1989, 2040.

ART. 862. The creditors of the usufructuary may demand that the usufruct be attached, and that they be paid therewith to the extent of their credits, furnishing the proper security for preservation and restitution to the proper person.

They may, consequently, oppose any cession or renunciation of the usufruct made with intent to defraud their rights.

1677 No. 8, 1295, 1451 par. 2.

ART. 863. A usufruct is usually extinguished by the arrival of the day, or the event of the condition prefixed for its termination.

If the usufruct has been established until a person other than the usufructuary attains a certain age, and such person dies before, the usufruct shall, nevertheless, continue to the day upon which said person would have attained such age, had he lived.

ART. 864. In the legal term of the usufruct is reckoned even the time during which the usufructuary has not enjoyed it, through ignorance or usurpation, or any other cause.

792, 827, 867.

ART. 865. A usufruct is also extinguished:

By the natural death of the usufructuary, even though it occur before the day or condition previously fixed for its termination.

By the resolution of the right of the constituent, as when it has been established on fiduciary property, and the time for restitution arrives.

By merger of the usufruct with the ownership.

By prescription.

By the renunciation of the usufructuary.

832 par. 2, 1213, 94. 9 of law 57 of 1887.

ART. 866. The usufruct is extinguished by the complete destruction of the thing subject to the usufruct; if only a part is destroyed, the usufruct subsists in the remainder.

If the entire usufruct be confined to a building, it shall cease forever by the total destruction thereof, and the usufructuary retains no right whatsoever in the soil.

But if the building destroyed belongs to a tenement, the usufructuary of the latter shall preserve his right over the entire tenement.

822 No. 3, 652. 124 of law 153 of 1887.

ART. 867. If an estate subject to a usufruct is flooded, and the waters afterwards withdraw, the usufruct shall revive for the time still to run before its termination.

723, 944, 864. 124 of law 153 of 1887.

ART. 868. Finally, the usufruct terminates by the decree of a Judge who, at the instance of the owner, declares it extinguished by reason of the usufructuary failing to fulfill his obligations in a grave matter, or by reason of his having caused considerable damage or deterioration to the thing the subject of the usufruct.

The Judge, according to the gravity of the case, may order either that the usufruct cease entirely, or that the thing subject to the usufruct revert to the owner, with the obligation of paying the usufructuary a determined annual pension, until the termination of the usufruct

758.

ART. 869. The legal usufruct of a father of a family on certain property of the child, and that of the husband, as administrator of the conjugal partnership, in the property of the wife, are subject to the special rules of the *Title Of Paternal Power*, and the *Title Of Conjugal Partnership*.

TITLE X.

Of the Rights of Use and of Habitation.

ART. 870. The *right of use* is a real right which consists, generally, in the power of enjoying a limited part of the benefits and products of a thing.

If it refer to a house, and to the benefit of living therein, it is called the *right of habitation*.

665, 1677 No. 9, 2342, 2200.

ART. 871. The rights of use and habitation are established and lost in the same manner as a usufruct.

756, 829, 830, 831, 2200.

ART. 872. Neither he who has the use nor he who enjoys the habitation shall be obliged to give security.

But he who enjoys the habitation is obliged to make an inventory; and the same obligation shall extend to the person having the use, if the use be established on things which must be returned in kind.

834, 835, 836, 837, 814, 820 par. 2.

ART. 873. The extent to which the right of use or of habitation is granted, is determined by the title establishing it, and in the absence of such determination in the title, it shall be governed by the following articles.

ART. 874. The use and habitation are limited to the personal necessities of the person having the use or habitation.

In the personal necessities of the person having the right of use or of habitation are included those of his family.

The family comprises the wife and the children; both those existing at the time of the establishment and those born later, this applying even if the person having the right of use or habitation was not married nor had recognized any natural child at the date of the establishment of such right.

It comprises, furthermore, the number of servants necessary for the family.

It comprises, furthermore, the persons who at that date may be living with the person having the right of use or habitation, and at his expense; and the persons to whom he owes support.

ART. 875. In the personal necessities of the person having the use or habitation are not included those of the industry or commerce in which he is engaged.

Thus, a person having the use of animals, cannot employ them in the hauling of the goods in which he deals, nor can the person enjoying the right of habitation use the house for shop or storage purposes.

Unless the thing in which the right is granted, by its character and ordinary use and its relation to the profession or industry of him who is to exercise it shall appear destined to serve him therein.

ART. 876. The person having the use of an estate has only a right to the common articles of support and fuel, and not to those of a superior quality; and he is obliged to take them with the owner's permission or to receive them from him.

ART. 877. He who has the use and he who has the right of habitation must use the objects comprised in their respective rights, with the moderation and care of a good father of a family; and they are obliged to contribute to the ordinary expenses of maintenance and cultivation, in proportion to the benefit they derive.

The latter obligation does not apply to the use or habitation given in charity to needy persons.

63 pars. 3 and 4.

ART. 878. The rights of use and habitation cannot be transmitted to the heirs, and cannot be transferred under any title, nor loaned nor leased.

Neither the person having the use, nor he who has the habitation, can rent, loan, or alienate any object to which the exercise of his right extends.

But they may give the fruits which it is lawful for them to consume in their personal necessities.

1677 No. 9, 1974, 852, 819.

TITLE XI.

Of Servitudes.

ART. 879. A *predial servitude*, or simply a *servitude*, is a charge imposed upon an estate for the benefit of another estate belonging to a different owner.

ART. 880. The *servient* tenement is that which suffers the charge, and the *dominant* tenement that which derives the benefit.

With regard to the dominant tenement, the servitude is called *active*, and with respect to the servient tenement, it is called *passive*.

665 par. 2.

ART. 881. A *continuous* servitude is that which is or can be exercised continuously, without the necessity of an actual act of man, as a servitude of aqueduct through an artificial canal belonging to the dominant tenement; and an *intermittent* servitude, that which is exercised at intervals of more or less length and which requires an actual act of man, such as a right of way.

939.

ART. 882. A *positive* servitude is, in general, that which imposes upon the owner of the servient tenement only the obligation of permitting something to be done, as either of the two preceding ones; and *negative*, that which imposes upon the owner of the servient tenement the prohibition of doing something, which it would be legal for him to do if the servitude did not exist, such as not being permitted to raise his walls above a certain height.

Positive servitudes sometimes impose upon the owner of the servient tenement the obligation of doing something, as that of article 900.

An *apparent* servitude is that which is constantly in sight, such as a right of way, when it is along a path or through a gate specially destined thereto; and *non-apparent* that which is not known by an exterior sign, such as a right of way, when it lacks these two conditions and other similar ones.

939, 973.

ART. 883. Servitudes are inseparable from the tenement to which they actively or passively belong.

ART. 884. If a servient tenement be divided, the servitude constituted thereon does not vary, and must be suffered by the person or persons who receive the part upon which it was exercised.

Thus, the new owners of the tenement enjoying a right of way, cannot require that the direction, form, character or width of the path or road destined thereto be changed.

ART. 885. He who has a right to a servitude, has likewise a right to the means necessary to exercise it. Thus, he who has a right to take water from a spring, situated upon the neighboring tenement, has a right of way to reach it, even though such right of way may not have been established expressly in the title.

924, 986 pars. 2 and 3.

ART. 886. He who enjoys a servitude may construct the works necessary to exercise it; but they shall be at his cost unless otherwise provided; and even though the owner of the servient tenement shall have obligated himself to construct or repair them, it shall be lawful for him to exonerate himself from the obligation by abandoning the part of the tenement upon which the works are to be constructed or maintained.

Articles cited and 916. 113 par. 2 of law 153 of 1887.

ART. 887. The owner of the servient tenement cannot alter, diminish nor render more difficult of access for the dominant tenement, the servitude with which his estate is charged.

Nevertheless, if in the course of time the original method of the servitude should become more onerous, he may propose that it be changed at his own cost; and if the changes do not damage or prejudice the dominant tenement, they must be accepted.

925.

ART. 888. Servitudes are either *natural*, when they arise from the natural situation of the places, or *legal*, when they are imposed by law, or *voluntary*, when they are constituted by an act of man.

ART. 889. The provisions of this title shall be understood without prejudice to the prescriptions regarding servitudes contained in the Police Code or in other laws.

ART. 890. If the dominant tenement be divided, each of the new owners shall enjoy the servitude, but without increasing the charge upon the servient tenement.

CHAPTER I.

Of Natural Servitudes.

See arts. 32 and 33 of law 153 of 1887.

ART. 891. The inferior tenement is obliged to receive the waters naturally descending from the superior tenement, that is to say, without the work of man contributing to their descent.

Consequently, a drain or sewer cannot be directed over the neighboring tenement, unless this special servitude shall have been established.

Upon the servient tenement, nothing can be done to disturb a natural servitude, nor the dominant tenement, which encumbers it.

936, 919, 887, 884 par. 2, 890.

ART. 892. The owner of a tenement may make the proper use of the waters naturally running through the same, even though they be not of his private ownership, for domestic purposes, for the irrigation of said tenement, to transmit motion to his mills, or other machinery, and to water his animals.

But although the owner may make use of such waters, he is obliged to cause the surplus to return to the usual channel thereof at the outlet of the estate.

ART. 893. The use which the owner of a tenement may make of the waters running through it, is limited:

1. In so far as the owner of the inferior tenement may have acquired by prescription or other title, the right of making use of the same waters; the prescription, in such case, shall be of eight years, counted as for the acquisition of ownership, and shall run from the time that apparent works have been constructed for the purpose of facilitating or directing the descent of the waters upon the inferior tenement.

2. In so far as it is in contravention of the laws and ordinances enacted for the benefit of navigation or flotation, or which regulate the division of the waters between the riparian owners.

3. When the waters may be necessary for the domestic needs of the inhabitants of a neighboring town; but in such case a portion thereof shall be left to the tenement, and compensation shall be made for all direct damages.

If the compensation should not be adjusted by common agreement, the town may request the expropriation of the use of the waters to the extent necessary.

ART. 894. The use of waters running between two tenements is vested in common in the two riparian estates, with the same limitations, and shall be regulated, in the event of dispute, by the proper authority, the rights acquired by prescription or otherwise being taken into consideration, as in the case of the preceding article, No. 1.

677 par. 2.

ART. 895. Waters running in an artificial channel, built at the expense of another, belong exclusively to him who may have built the channel, with the lawful requisites.

ART. 896. The owner of an estate may make use, as he wishes, of the rain waters running along a public highway and change their course to make use thereof. No prescription can deprive him of this use.

CHAPTER 2.

Of Legal Servitudes.

ART. 897. *Legal servitudes* are those relative to the public use, or to the utility of private individuals.

Legal servitudes, relative to the public use, are the following:

The use of banks in so far as necessary for navigation or flotation.

And the others determined by the respective laws.

ART. 898. The owners of the banks are obliged to leave free the space which may be necessary for navigation or flotation by towing, and shall tolerate that the navigators ground their barges and boats, secure them to trees, careen or repair them, dry their sails, purchase the goods which they freely wish to sell them, and sell their own to the riparian owners; but they cannot establish public sales without the permission of the respective riparian owner and of the local authority.

The riparian owner cannot fell a tree to which a vessel, barge or boat is actually moored.

691.

ART. 899. Legal servitudes of the second class are also determined by the laws on rural police, with the exception of what is herein provided regarding some of such servitudes.

ART. 900. Every owner of an estate has the right to have the limits fixed which separate him from the adjoining estates, and may require that the respective owners agree thereto, the demarcation being made at the common expense.

916, 1374, 812, 882 par. 2.

ART. 901. If any of the marks which indicate the boundaries of common estates shall have been removed, the owner of the prejudiced estate has the right to demand that he who has removed it replace it at his own cost, and compensate him for the damages suffered through the removal, without prejudice to the penalties with which the laws punish the crime.

ART. 902. The owner of an estate has the right to enclose or fence it on all sides, without prejudice to the servitudes constituted in favor of other tenements.

The enclosure may consist of walls, ditches, dead or live hedges.

ART. 903. If the owner effects the enclosure of the estate at his own cost and on his own land, he may construct it of the quality and dimensions he desires. And the adjoining owner cannot make use of the wall, ditch, or hedge for any purpose, unless he shall have acquired this right

by a title or by prescription of eight years counted as for the acquisition of ownership.

ART. 904. The owner of a tenement may force the owners of the adjoining tenements to contribute to the construction and repair of common dividing fences.

The Judge, in a necessary case, shall regulate the manner and form of the contribution; so that no ruinous charge be imposed upon any owner.

The dividing fence, constructed at the common expense, shall be subject to the servitude of party wall.

916.

ART. 905. If a tenement is removed from any communication with the public road, by the interposition of other tenements, the owner of the former shall have the right to impose upon the others a right of way, in so far as indispensable for the use and benefit of his tenement, paying the value of the land necessary for the servitude, and compensating all other damages.

1394 No. 5.

ART. 906. If the parties should not agree, the amount of the indemnity, as well as the exercise of the servitude, shall be fixed by experts.

ART. 907. If, the right of way having been granted, in accordance with the preceding articles, it should later become possible for the dominant tenement to dispense therewith, by reason of the acquisition of lands which give the tenement easy access to the road, or by other means, the owner of the servient tenement shall have the right to demand that he be relieved of the servitude, upon returning what may have been paid him for the value of the land at the time of its establishment.

929.

ART. 908. If a portion of a tenement be sold or exchanged, or if it be adjudicated to any one of those who held it *pro indiviso*, and, consequently, this part should become separated from the road, a right of way shall be understood as granted in favor of the same, without any indemnity whatsoever.

66, 1178, 1394 No. 3.

ART. 909. *Party division (medianeria)* is a legal servitude, by virtue of which the owners of two adjoining tenements which have common dividing walls, ditches or fences, are subject to the mutual obligations which will be stated.

ART. 910. The right of party division exists for each one of the two adjoining proprietors, when it shall appear either by an apparent mark

or when it shall be evident that the enclosure was made concurrently and at the common expense.

ART. 911. Every wall of separation between two buildings shall be considered a *party wall*, but only in so far as it shall be common to the buildings themselves.

Every enclosure between yards, gardens and fields shall be considered a party division, when each of the contiguous areas is enclosed on all sides: if only one be thus enclosed, it shall be presumed that it belongs to it exclusively.

66.

ART. 912. In all cases, and even when it shall appear that a party fence or wall belongs exclusively to one of the adjoining tenements, the owner of the other tenement shall have the right to make it a party one in whole or in part, even without the consent of his neighbor, by paying him one-half the value of the land upon which the enclosure is erected, and one-half the actual value of the portion of enclosure which he desires to be a party one.

ART. 913. Either of the two co-owners who shall desire to make use of a party wall for the purpose of building thereon, or to make it support the weight of a new construction, must first secure the consent of his neighbor, and if the latter should refuse it, he shall apply to the court for the appointment of experts (*provocaré un juicio práctico*) to secure the order of the measures necessary so that the new construction shall not damage his neighbor.

Under ordinary circumstances, it shall be understood that either of the co-owners of a party wall may build thereon, inserting beams to the distance of one decimeter from the opposite surface; and that if the neighbor, on his side, desires to insert beams in the same place, or build a chimney, he shall have the right to cut the beams of his neighbor to the middle of the wall, without moving them.

ART. 914. If wells, water closets, stables, chimneys, furnace places, ovens, or other works are in question which may damage adjoining buildings or tenements, the rules prescribed by the police laws must be observed, whether the dividing wall be a party one or not. The same applies to powder deposits, to damp or infectious substances, and to all that which may damage the solidity, security and salubrity of buildings.

998.

ART. 915. Either of the co-owners has the right to raise the party wall, in so far as the police laws permit, conforming to the following rules:

1. The new work shall be constructed wholly at his cost.

2. He shall pay his neighbor, as an indemnity, for the increased weight he is going to place on the party wall, one sixth of the value of the new work.

3. He shall pay the same indemnity every time that the party wall is rebuilt.

4. He shall be obliged to heighten at his own cost the chimneys of his neighbor located in the party wall.

5. If the party wall be not sufficiently solid to support the increased weight, he shall reconstruct it at his own expense, indemnifying the neighbor for the removal and replacing of everything leaning against or attached to the wall on the latter's side.

6. If it should become necessary to increase the thickness of the wall when it is rebuilt, the land necessary for such thickening shall be taken from the land of the person constructing the new work.

7. The neighbor may, at any time, acquire a party interest in the portion newly constructed, upon payment of one-half the total cost thereof, and the value of one-half the land upon which the party wall may have been extended, according to the preceding paragraph.

ART. 916. The cost of construction, preservation and repair of the enclosure, shall be borne by all those who own a right of ownership therein, in proportion to their respective rights .

Nevertheless, any of them may relieve himself from this charge by abandoning his party right, but only when the division does not consist of a wall which supports a building belonging to him.

900, 886. 113 par. 2, of law 153 of 1887.

ART. 917. Trees situated in a party fence, are also party trees; the same applies to trees, the trunk of which is situated on the dividing line of two estates, even though there be no intermediate enclosure.

Either of the two co-owners may demand that such trees be felled, if proof be adduced that they are somehow injured thereby; and if by any accident they should be destroyed, they shall not be replaced without their consent.

ART. 918. Water rights granted by a competent authority, shall be understood as without prejudice to former rights therein acquired.

683, 1001.

ART. 919. Every tenement is subject to the servitude of aqueduct in favor of another tenement which lacks the waters necessary for the cultivation of planted, sown or pasture land, or in favor of a town which requires the same for the domestic service of its inhabitants, or in favor of an industrial establishment needing them for the operation of its machinery.

This servitude consists in the conduction of the waters through the servient tenement, at the expense of the person interested; and it is subject to the following rules:

891, 928, 986 pars. 2 and 3, 1001.

ART. 920. Houses, and the yards, courts, gardens and orchards appurtenant thereto, are not subject to the servitude of aqueduct.

ART. 921. The water shall be carried through a conduit which does not permit any overflow, or the water to stand or gather dirt, and which shall have at intervals the necessary bridges for the convenient administration and cultivation of the servient tenements.

ART. 922. The right of aqueduct comprises that of laying it in a direction so as to permit of the free descent of the water and which from the nature of the soil will not make the work exceedingly expensive.

With these conditions in view, the aqueduct shall be laid along the lines which shall cause the least damage to cultivated lands.

The shortest route shall be considered as the least prejudicial to the servient tenement, and the least expensive to the person interested, if the contrary be not shown.

The Judge shall conciliate the interests of the parties in so far as possible, and in doubtful points he shall decide in favor of the servient tenements.

ART. 923. The owner of the servient tenement shall be entitled to payment for the value of all the land occupied by the aqueduct, in addition to that of a strip on each side thereof not less than a meter wide along the entire course, which strip may be greater by agreement between the parties, or by order of the Judge, when circumstances shall so require; and an additional ten per centum on the entire sum.

He shall furthermore be entitled to indemnity for all damage caused by the construction of the aqueduct and by its filtrations and overflow which can be imputed to defects in construction.

ART. 924. The owner of the servient tenement is obliged to permit laborers to enter thereon for the purpose of cleaning or repairing the aqueduct, provided that notice be given in advance to the manager of the tenement.

He is also obliged to permit an inspector or caretaker to enter, with such notice in advance; but only from time to time, or as often as the Judge, in the event of disagreement and taking the circumstances into consideration, may fix.

885, 886, 986 pars. 2 and 3.

ART. 925. The owner of the aqueduct may prevent any planting or new work in the lateral space referred to in article 923.

895.

ART. 926. He who has an aqueduct upon his own tenement, for his own benefit, may object to the construction of another thereon, and offer passage through his own for the waters which another person desires to use; provided that this does not entail a notable damage to the person desirous of opening a new aqueduct.

If this offer be accepted, there shall be paid to the owner of the servient tenement, the value of the ground occupied by the old aqueduct (including the lateral space referred to in article 923), in proportion to the new volume of water introduced therein, and he shall be reimbursed, furthermore, in the same proportion for the value of the work throughout the length used by the person interested.

The latter, in a necessary case, shall widen the aqueduct at his own expense and shall pay for the new land occupied by him, and for the lateral space, and for all other damage; but without the surcharge of ten per cent.

ART. 927. If he who has an aqueduct upon the estate of another should desire to let a larger volume of water therein, he may do so, upon indemnifying the servient tenement for all damage. And if new works should be necessary for the purpose, the provisions of article 923 shall be observed with regard thereto.

ART. 928. The rules established for the servitude of aqueduct extend to those constructed to permit the escape and for the direction of surplus water, and to drain marshes and natural filtrations by means of ditches and drainage canals.

ART. 929. If an aqueduct should be abandoned, the land shall return to the ownership and exclusive use of the owner of the servient tenement, who shall be obliged to return only what was paid him for the value of the ground.

907.

ART. 930. Whenever waters running for the benefit of private individuals, shall prevent or render difficult communication with neighboring tenements, or shall disturb irrigation or drainage, the individual benefited thereby shall be obliged to build the bridges, canals and other works necessary to avoid this inconvenience.

ART. 931. The purpose of a legal servitude of *light*, is to furnish light to any space whatsoever which is enclosed and roofed; but not to furnish a *view* upon the neighboring tenement, whether enclosed or not.

ART. 932. No window or opening of any kind can be placed in a party wall, without the consent of the co-owner.

The owner of a wall that is not a party wall, may place any number therein of the dimensions that he may desire.

If the wall be not a party wall, except for a portion of its height, the owner of the portion which is not common enjoys a similar right therein.

The proximity of the wall to the neighboring tenement is not an obstacle to the exercise of the servitude of light.

ART. 933. The legal servitude of light is subject to the following conditions:

1. The window shall be supplied with an iron grating, and a wire screen, with a mesh of three centimeters or less.

2. The lower part of the window shall be at least three meters from the floor of the room to which it furnishes light.

ART. 934. The person enjoying the servitude of light shall have no right to prevent the erection of a wall upon the neighboring soil which deprives him of the light.

If the dividing wall should become a party wall, the legal servitude of light ceases, and a voluntary servitude only lies, determined by the mutual consent of both owners.

ART. 935. No windows, balconies, projections or terraces looking into the rooms, yards or courts of a neighboring tenement, whether enclosed or not, can be constructed; unless there be an intervening distance of three meters.

The distance shall be measured between the vertical plane of the greatest projecting line of the window, balcony, etc., and the vertical plane of the dividing line of the two tenements, if both planes are parallel.

If the two planes be not parallel, the same measure shall be applied to the shortest distance between them.

ART. 936. There is no legal servitude of rain water. The roofs of all buildings must shed the rain waters upon the tenement to which they belong, or upon the street or public road or highway, and not upon another tenement unless it be with the consent of the owner.

987 par. 3, 891.

CHAPTER 3.

Voluntary Servitudes.

See article 32 of law 153 of 1887.

ART. 937. Any person may subject his tenement to the servitudes he may desire, and acquire them over neighboring tenements, with the consent of their owners, provided that public order is not disturbed thereby nor the laws violated.

Servitudes of this kind may also be acquired by a decree of a Judge, in the cases provided for by law.

ART. 938. If the owner of a tenement establish a continuous and apparent service in favor of another tenement which also belongs to him, and then later alienates one of them, or they become the property

of different owners by partition, the same service shall subsist as a servitude between the two tenements, unless a provision shall have been embodied in the deed of alienation or of partition, stipulating otherwise.

942 par. 5, 1178.

ART. 939. Intermittent servitudes of all kinds, and continuous non-apparent servitudes can be acquired only by means of a title; not even the immemorial enjoyment thereof shall be sufficient to constitute them.

Continuous and apparent servitudes may be acquired by title, or by prescription of eight years, computed as for the acquisition of the ownership of estates.*

881, 882, 973, 2518 par. 2, 2520 par. 3, 2529.

ART. 940. The title constituting a servitude may be supplied by the express acknowledgment of the owner of the servient tenement.

The former destination, according to article 938, may also serve as a title.

ART. 941. The title or the possession of the servitude for the time fixed in article 939, determines the rights of the dominant tenement and the obligations of the servient tenement.

CHAPTER 4.

Extinction of Servitudes.

ART. 942. Servitudes are extinguished:

1. By the resolution of the right of him who established them.
2. By the arrival of the day or the fulfillment of the condition, if so established.
3. By confusion, that is, the perfect and irrevocable merger of both tenements in the hands of the same owner.

Thus, when the owner of one of them purchases the other, the servitude is extinguished, and if they are separated by a sale, it does not revive; excepting in the case of article 938; on the other hand, if the conjugal partnership acquires an estate which owes a servitude to another estate belonging to one of the two spouses, there shall be no confusion, excepting when, the society having been dissolved, both estates are adjudicated to one and the same person.

4. By the renunciation of the owner of the dominant tenement.
5. By non-user for twenty years.

*In accordance with the Code of Chile and art. 2529 of this Code, the time for the prescription is ten years, and not *eight*, as fixed herein.

In intermittent servitudes the time runs from the period the non-user began; in continuous, from the time an act contrary to the servitude shall have been executed.

2535, 2536, 2538.

ART. 943. If the dominant tenement belong to a number *pro indiviso*, the enjoyment of one of them interrupts the prescription with regard to all; and if the prescription cannot run against one of them, it can run against none.

1586, 2525, 2540.

ART. 944. If the servitude cease on account of things being in such condition that it is not possible to use the same, it shall revive as soon as the impediment ceases to exist, provided that this occurs before the expiration of twenty years.

867.

ART. 945. A particular mode of exercising a servitude may be acquired and lost by prescription, in the same manner as the servitude itself could be acquired or lost.

TITLE XII.

Of Revendication.*

ART. 946. *Revendication* or an *action of ownership* is the right of action which the owner of a singular thing, of which he is not in possession, has to have the possessor thereof adjudged to return it.

762, 1931. 254 of law 153 of 1887.

CHAPTER I.

What Things can be Revendicated.

ART. 947. Corporeal things, real property and movables may be revendicated.

Herefrom are excepted movables, the possessor of which shall have purchased them at a fair, store, shop or other industrial establishment in which movable things of the same kind are sold.

If this fact be established, the possessor shall not be obliged to restore the thing, if he be not reimbursed what he may have given therefor and what he may have spent in its repair and improvement.

1633 par. 3, 2321, 1547.

ART. 948. Other real rights may be revendicated in the same manner as ownership, excepting a right of inheritance.

This right produces the action of petition of inheritance, referred to in Book 3.

665, 756, 1548.

ART. 949. A determinate quota *pro indiviso* of a singular thing may be revendicated.

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CHAPTER 2.

Who May Revendicate.

ART. 950. A *revendicatory* action or an *action of ownership* may be brought by the person having the full or naked, absolute or fiduciary ownership of the thing.

670, 3342, 2418, 878, 665, 1988, 2278.

* See La. Civil Procedure, secs. 52, 163, 362-363.

ART. 951. The same right of action is granted, although ownership be not established, to him who has lost the regular possession of the thing and was about to acquire it by prescription.

But such action shall not avail against the real owner, nor against him who possesses under an equal or better right.

Articles cited and 764.

CHAPTER 3.

Against Whom Actions for Revendication May Be Brought.

ART. 952. An action of ownership is brought against the actual possessor.

762, 1583.

ART. 953. The mere holder of the thing revendicated is obliged to declare the name and residence of the person in whose name he holds it.

ART. 954. If any one, in bad faith, claims to be the owner of the thing which is revendicated without being so, he shall be adjudged to pay all damages which may have accrued to the plaintiff through such deception.

768, 769.

ART. 955. The action of ownership shall lie against the person who alienated the thing for the restitution of what he may have received therefor, provided that by reason of the alienation the recovery thereof should have been rendered impossible or difficult; and if he alienated it knowing that it belonged to another, for the indemnity of all damages.

The plaintiff who receives from the conveyor what was given the latter for the thing, confirms the alienation by such act.

2320, 1874.

ART. 956. The action of ownership is not brought against an heir, excepting for the part which he may possess in the thing; but the prestations incumbent upon the possessor by reason of the fruits or deteriorations imputable to him, pass to the heirs of the latter, in proportion to their hereditary quotas.

1580.

ART. 957. An action of ownership may be brought against a person who possessed in bad faith and has ceased to possess by his act or fault as if he were actually in possession.

In whatever manner he may have ceased to be in possession, and even

though the person seeking the revendication should prefer to proceed against the actual possessor, with regard to the time the thing may have been in his possession, he shall have the obligations and rights which according to this Title pertain to possessors in bad faith, by reason of fruits, deteriorations and expenses.

If he shall pay the value of the thing, and the person seeking the revendication accepts it, he shall succeed to the rights of the latter therein.

The person seeking the revendication in the cases of the two preceding paragraphs, shall not be obliged to warranty.

768, 769, 983, 963 *et seq.*, 1668, 1895, 1903, 2320 par. 2.

ART. 958. If a corporeal movable, being revendicated, there should exist reasons to fear that it may be lost or deteriorate in the hands of the possessor, the plaintiff may demand its sequestration; and the possessor shall be obliged to consent thereto or give sufficient security of restitution in the event that he should be adjudged to make restitution.

2273 *et seq.*

ART. 959. If the ownership or another real right in an immovable is sued for, the possessor shall continue to enjoy the same until a final decision shall have been rendered, which has become a *res judicata*.

But the plaintiff shall have the right to request such judicial measures as may be necessary to prevent any deterioration of the thing, and of the movables and live stock appurtenant thereto and comprised in the revendication, if there should be reason to fear it, or the means of the defendant do not offer sufficient guaranties.

ART. 960. An action for revendication extends to the attachment, in the hands of a third person, of what the latter may owe as the price or exchange to the possessor who alienated the thing.

1521 No. 3, 1720.

CHAPTER 4.

Mutual Prestations.

ART. 961. If the possessor be defeated, he shall restore the thing within the period fixed by law or by the Judge, in accordance therewith; and if the thing shall have been sequestrated, the plaintiff shall pay to the sequestrator the cost of custody and preservation, and shall be entitled to reimbursement thereof by the possessor in bad faith.

1746, 1551 par. 2, 2258, 2259, 2277, 2218.

ART. 962. In the restitution of an estate are comprised the things which form a part thereof, or which are considered as immovable, by reason of their connection therewith, as stated in the Title *Of Different Kinds of Property*. Other things shall not be comprised in the restitution, if they have not been included in the suit and judgment; but they may be revendicated separately.

In the restitution of a building that of the keys thereto is included.

In the restitution of anything, that of the titles concerning it, if in the hands of the possessor, is included.

ART. 963. A possessor in bad faith is responsible for the deterioration which the thing may have suffered through his act or fault.

A *bona fide* possessor, while he retains the possession, is not liable for deterioration, except in so far as he shall have benefited thereby; as, for example, by destroying a forest or grove of trees and selling the wood or lumber, or using it for his own benefit.

768, 769.

ART. 964. A possessor in bad faith is obliged to restore the natural and civil fruits of the thing, and not only those collected but also such as the owner would have been able to secure through ordinary intelligence and activity, had he had the thing in his power.

If the fruits do not exist, he shall owe the value they had or would have had at the time of the collection: such as have deteriorated in his possession shall be considered as not existing.

The *bona fide* possessor is not obliged to make restitution of the fruits collected before the answer to the suit: with regard to those collected thereafter, he shall be subject to the rules prescribed in the two preceding paragraphs.

In every case of restitution of fruits the person making it shall be allowed the ordinary expenses that he may have incurred in their production.

768, 769, 714 *et seq.*, 417 par. 2, 966 pars. 1 and 4.

ART. 965. The defeated possessor is entitled to allowance of the necessary expenses incurred in the preservation of the thing, according to the following rules:

If this expense was incurred in permanent works, such as a fence to prevent depredations, or a dam to prevent floods, or in repairs to a building damaged by an earthquake, the possessor shall be allowed such expenses, in so far as they shall have been really necessary; but they shall be reduced to the value of the works at the time of restitution.

And if the expenditures were for things which from their nature do not leave a permanent material result, such as the judicial defense of

the estate, they shall be allowed the possessor in so far as they benefit the person seeking the revendication and shall have been executed with average intelligence and economy.

815 No. 1, 1802, 1993, 1994.

ART. 966. A defeated *bona fide* possessor, is also entitled to an allowance for the useful improvements made before the answer to the suit.

By useful improvements shall be understood only such as shall have increased the market value of the thing.

The person seeking the revendication, shall choose between the payment of the value thereof at the time of the restitution of the works of which the improvements consist, or the payment of the increased value of the thing at said time due to the said improvements.

With regard to the works done after the suit was answered, the *bona fide* possessor shall have the rights only which are granted in the last paragraph of this article to a possessor in bad faith.

The possessor in bad faith shall not be entitled to any allowance for the useful improvements referred to in this article.

But he may take with him the materials of which said improvements consist, provided that they can be removed without damage to the thing recovered, and that the owner refuses to pay him the price which such materials would be worth after their separation.

1746 par. 2, 1994, 1993, 1802, 964 pars. 1, 3.

ART. 967. With regard to improvements of luxury (*mejoras voluptuarias*) the owner shall not be obliged to reimburse either a possessor in good or bad faith therefor, who shall have with respect thereto only the right granted by the preceding article to a possessor in bad faith, with respect to useful improvements.

By improvements of luxury are understood those which consist only in objects of luxury and recreation, such as gardens, fountains, artificial cascades, and generally those which do not increase the market value of the thing, or increase it in an insignificant proportion only.

1994.

ART. 968. It shall be understood that the removal of the materials permitted by the preceding articles, is detrimental to the thing revendicated, when it would be left thereby in a condition worse than before the making of the improvements; excepting in so far as the defeated possessor should be able to replace it immediately in its former condition, and should agree thereto.

ART. 969. The good or bad faith of the possessor refers, with regard

to the fruits, to the time of the collection, and with regard to the expenses and improvements, to the time they were made.

768, 769.

ART. 970. When there shall be due the defeated possessor a balance by reason of expenses and improvements, he may retain the thing until the payment is made, or security to his satisfaction is given.

859, 1995, 2417, 1746.

ART. 971. The rules of this Title shall apply also to a person who, possessing in the name of another, improperly retains real or movable property, even though he do so without intention of ownership.

777, 1746, 1995, 2417.

TITLE XIII.

Of Possessory Actions.

ART. 972. The object of possessory actions is to preserve or recover the possession of real property, or of real rights constituted therein.

ART. 973. No possessory action can be brought with regard to things which cannot be acquired by prescription, such as non-apparent or intermittent servitudes.

939.

ART. 974. A possessory action can be brought only by him who has been in quiet uninterrupted possession for a full year.

762.

ART. 975. The heir has and is subject to the same possessory actions which the person from whom he inherited would have or be subject to, if living.

ART. 976. Actions whose purpose is to maintain possession, prescribe after one full year, counted from the date of the act disturbing or interrupting the same.

Those whose purpose is to recover possession, expire at the end of one full year, counted from the date when the former possessor lost it.

If the new possession has been violent or clandestine, this year shall be computed from the last act of violence, or from the date the concealment ceased.

The rules given in articles 778, 779, and 780 regarding the continuation of possession, apply to possessory actions.

1007.

ART. 977. The possessor has a right to demand that his possession be not disturbed or embarrassed or that he be not deprived thereof, that he be indemnified for the damage he may have suffered, and that he be given security against him whom he has reason to fear.

ART. 978. A usufructuary, a user and one who has the right of habitation, are capable of exercising for themselves the possessory actions and exceptions the purpose of which is to preserve or recover the enjoyment of their respective rights, even against the proprietor himself. The proprietor is obliged to assist them against any disturber or strange usurper, when called upon to do so.

Decisions obtained against the usufructuary, the user or the person having the right of habitation, are binding upon the proprietor; unless the possession of the ownership of the estate or of appurtenant rights is in question in such case a decision shall not avail against a proprietor who has not been a party in the proceedings.

2342, 670, 950.

ART. 979. The ownership pleaded by either party shall not be taken into consideration in possessory actions.

Nevertheless, titles of ownership to prove the possession may be exhibited, but only those the existence of which can be proved in a summary manner; nor can any vices or defects thereagainst be pleaded, which cannot be proved in the same manner.

ART. 980. The possession of recorded rights is proved by the record, and as long as the latter subsists and provided it has lasted a full year, no evidence of possession in rebuttal thereof can be admitted.

785, 789, 66 pars. 3 and 4, 2526.

ART. 981. The possession of the soil must be proved by positive acts, such as those to which ownership only gives a right, as the cutting of timber, the construction of buildings, of enclosures, of plantings or sowings, and others of like significance, executed without the consent of him who disputes the possession.

ART. 982. He who has been unjustly deprived of possession, shall have the right to demand that he be restored therein with compensation for damages.

771, 772, 773, 774.

ART. 983. An action for restitution may be brought not only against the usurper, but against any person whose possession is derived from that of the usurper under any title.

But the usurper only, or the third person acting in bad faith, shall be obliged to make compensation for damages, and if there be several persons bound, they shall all be so *in solidum*.

2343, 2344, 1568 par. 2, 957, 1515 par. 2.

ART. 984. Any person who has been violently evicted, either from possession, or from mere tenancy, and who, by reason of holding the possession in the name of another, or not having possessed for a sufficient time, or for any other cause, cannot institute a possessory action,

shall, nevertheless, have the right to the re-establishment of the things in their original condition, without being required to prove for this purpose more than the violent eviction, nor can concealment or former eviction or dispossession be pleaded. This right prescribes in six months.

Things having been restored to their original condition and compensation having been made for damages, either side may institute the proper possessory actions.

771 to 775, and the citations to the latter.

ART. 985. Acts of violence, committed with or without arms, shall furthermore be punished with the penalties which the respective Code prescribes.

TITLE XIV.

Of Some Special Possessory Actions.

ART. 986. The possessor has the right to demand an injunction against the construction of any new work upon the land of which he is in possession.

But he shall not have the right to denounce with this end in view the works necessary to guard against the collapse of a building, aqueduct, canal, bridge, sewer or drain, etc., provided that they be confined to what is absolutely necessary in that which may incommode him, and that, upon their conclusion, things be restored to their previous condition at the cost of the owner of the works.

Nor shall he have any right to impede the works necessary to maintain the proper cleanliness in the roads, pipes, drains, etc.

775 and its citations, 1007, 919, 885, 886, 924.

ART. 987. New works which can be denounced are those which, being constructed upon a servient tenement, impede the enjoyment of a servitude established thereon.

Works which it is desired to support on another's building, not subject to such servitude, are also subject to denunciation.

Any projecting work which crosses the vertical plane of the dividing line of the tenements, is declared specially subject to denunciation, even though it be not supported upon the tenement of another, nor furnishes a view thereto, nor sheds rain water thereon.

915, 936.

ART. 988. He who shall fear that the collapse of a neighboring building will cause him damage, shall have the right to apply to the Judge for an order to the owner thereof to have said building levelled, if its condition were such as not to admit of its repair; or, if repairs are possible, that they be made at once, and if the defendant does not comply with the order of the court, the building shall be levelled or the repairs shall be made at his expense.

If the damage feared from the building should not be grave, it shall be sufficient that the defendant give bond to make good any damage which may be caused by the bad condition of the building.

2355 par. 2, 2350.

ART. 989. If the repairs referred to in the preceding article should be made by a person other than the defendant, the person doing so shall

preserve the form and dimensions of the old building in all its parts, unless it should be necessary to change them in order to guard against the danger.

The alterations shall be made at the will of the owner of the building, in so far as compatible with the object of the complaint.

ART. 990. If notice of the complaint having been served, the building should collapse on account of its bad condition, the neighbors shall be indemnified for all damage suffered; but if it should fall by reason of a fortuitous event, such as a flood, thunderbolt or earthquake, an indemnity shall not lie; unless it be proved that the fortuitous event would not have caused the building to collapse, had it not been in such a bad condition.

1608 No. 1, 1007, 2359.

ART. 991. No indemnity shall lie, unless notice of the complaint shall have first been served.

1608 No. 1.

ART. 992. The preceding provisions shall apply to the danger feared from any constructions; or from trees partly uprooted or liable to fall in the event of an ordinary occurrence.

Articles cited.

ART. 993. If enclosures, walls or other works are constructed which turn the direction of running waters, so that they run upon another's ground, or their course is checked and they become stagnant, rendering the soil damp, or deprive tenements entitled to the enjoyment of said waters from the benefit thereof, the Judge, on the petition of the persons interested, shall order that said works be removed or modified, and compensation made for damages.

892, 925, 924.

ART. 994. The provisions of the preceding article apply not only to new works, but also to those already constructed, provided that a period of time sufficient to constitute a right of servitude, shall not have elapsed.

But no prescription shall be admitted against works which befoul the air and make it notoriously injurious.

1007.

ART. 995. He who constructs works to prevent the entrance of waters which he is not obliged to receive, is not liable for the damage that the

waters so obstructed, without the intention of causing it, may occasion to the lands or buildings of others.

ART. 996. If water which runs through an estate should become stagnant or change its course being obstructed by the mud, the stones, sticks or other substances which it carries along with it and deposits, the owners of the estates damaged by this change in the course of the water, shall have a right to force the owner of the estate where the obstruction has occurred, to remove it, or permit them to do so, so that things may revert to their original condition.

The cost of the cleaning or removal of the obstruction shall be shared by the owners of all the estates, in proportion to the benefit each derives from the water.

924, 925.

ART. 997. Whenever some of the waters which an estate uses, through the negligence of the owner to give them an outlet without damage to his neighbors, drain upon another estate, the owner of the latter shall be entitled to recover damages, and in the event of a repetition he shall recover double the amount of the damages suffered.

ART. 998. The owner of a house has the right to impede stagnant or running water near his walls, or damp substances, which might injure him.

He also has the right to prevent the planting of trees at a distance of less than fifteen decimeters, or of plants or flowers at a distance of less than five decimeters.

If the trees be of a species the roots of which spread to great distances, the Judge may order that they be planted at such a distance as not to injure the adjoining buildings: the maximum distance fixed by the Judge shall be five meters.

The rights granted by this article shall subsist against the trees, flowers or plants planted, unless the planting shall have taken place prior to the construction of the walls.

914.

ART. 999. If the branches of a tree extend over the ground of another, or its roots penetrate the soil of another, the owner of the soil may require that the projecting portion of the branches be cut off, and he himself cut the roots.

This is understood even though the tree be planted at the proper distance.

ART. 1000. The fruits that the branches projecting over the land of another bear, belong to the owner of the tree, who, nevertheless, cannot enter to gather them without the permission of the owner of the land, if it be enclosed.

The owner of the land shall be obliged to grant this permission; but only on such days and at such hours as may be convenient to him.

716.

ART. 1001. He who shall desire to construct a plant, or mill or any other work whatsoever, using waters which go to other estates or to another plant, mill or manufacturing establishment, and which do not run through an artificial channel built at the expense of another, may use them upon his own ground or upon the ground of another with the permission of the owner thereof; provided that he does not divert or impair the waters to the prejudice of those who have already built apparent works for the purpose of using said waters, or who in any other manner may have acquired the right to use the same.

919, 918, 993.

ART. 1002. Any person may dig a well upon his own ground, even though he should thereby diminish the water supply of another well; but if he does not derive any benefit therefrom, or a benefit which cannot be compared with the damage to another, he shall be obliged to fill it.

ART. 1003. Whenever it shall become necessary to prohibit, destroy or amend a work belonging to more than one person, the complaint or suit may be brought against all of them jointly or against any one of them; but the indemnity which may lie for the damages incurred, shall be divided among all *pro rata*, without prejudice to the persons charged with this indemnity dividing it among themselves, in proportion to the part each may have in the work.

And if the damage suffered or feared should belong to a number, each of them shall have the right to make complaint or bring the suit by himself, in so far as the prohibition, destruction or amendment of the work is concerned; but no one can claim indemnity except for the damage he himself may have suffered, unless he shall legally establish his right to represent each of the others respectively.

1581, 1583, 1590, 2325, 2350.

ART. 1004. The actions granted by this Title, shall not lie against the exercise of a legally constituted servitude.

ART. 1005. The municipality and any resident of the town shall have with regard to the roads, squares or other places of public use, and for the safety of those travelling thereover, the rights granted the owners of private estates or buildings.

And whenever as a consequence of a popular action it should become necessary to demolish or change a work, or indemnify a damage suffered, the plaintiff or complainant shall receive, at the cost of the defendant, a

sum not less than one-tenth nor more than one-third of the cost of the demolition or change, or of indemnity for damages; without prejudice to the award of one-half of any pecuniary penalty which may be imposed for the offense or neglect, being awarded to the plaintiff.

2359, 2360.

ART. 1006. The municipal or popular actions shall be understood without prejudice to the rights of action of the persons immediately interested.

ART. 1007. The rights of action granted in this Title for the recovery of damages for an injury sustained, prescribe forever at the end of a full year.

. Those, the purpose of which is to guard against an injury, do not prescribe as long as there is just cause to fear it.

If actions to prevent the construction of a new work are not instituted within one year, the defendants or persons complained against shall be protected in the possessory action, and the complainant or plaintiff can enforce his rights through the ordinary channels only.

But not even the last named action shall lie when, according to the rules laid down for servitudes, the right shall have prescribed.

976, 986.

BOOK THIRD.

OF SUCCESSION MORTIS CAUSA AND DONATIONS
INTER VIVOS.

TITLE I.

Definitions and General Rules.

ART. 1008. A deceased person is succeeded under a universal title or under a singular title.*

The title is *universal* when the deceased is succeeded in all his transferable property, rights and obligations, or a quota thereof, such as a half, a third or a fifth.

The title is *singular*, when one or more specific substances or bodies are inherited, as such a horse, or such a house; or one or more undeterminate species of a certain kind, as one horse, three cows, six hundred pesos, forty hectoliters of wheat.

1157, 1201, 1124, 1155, 1162, 1199, 1200.

ART. 1009. If one succeeds by virtue of a testament, the succession is called *testamentary*, and if by virtue of the law, *intestate* or *abintestato*.

The succession to the property of a deceased person may be partly testamentary and partly intestate.

1052.

ART. 1010. Assignments (*asignaciones*)† *mortis causa*, are those made by law or the testament of a deceased person, to succeed to his property.

* See La. Civil Code, arts. 1605 [1598] to 1643 [1636].

† For the purpose of accuracy, the terms *asignaciones* and *asignatarios* have been translated respectively as *assignments* and *assigns*. While an assignment is not technically a testamentary transfer (Black's Law Dic.) the word as used here applies to transfers *mortis causa* only. The term is not mentioned in Escriche, Diccionario de la Legislacion y Jurisprudencia, nor in Alcubilla, Diccionario de la Administracion española, while the Dictionary of the Spanish Academy and Zerolo's work, give it practically the same meaning as assignment in English. *Assigns* is defined in the Louisiana Civil Code (Art. 3556 [3522]) as "those to whom rights are transmitted by particular title; such as sale, donations, legacy, transfer or cession." As employed in this Code, and qualified as testamentary, the term includes also those succeeding under a universal title.

The term appears to have been used in Spanish first in the Chilean Civil Code, as it is not used in this connection in any of the Spanish or French laws to which the translator has had access.

By the word assignments in this Book are signified *assignments mortis causa*, whether made by man or by the law.

The *assign* (*assignatario*) is the person to whom the assignment is made.

ART. 1011. Assignments under a universal title are called *inheritances*, and those under a singular title, *legacies*. The assign of an inheritance is called an *heir*, and of a legacy a *legatee*.

1155, 1162, 1201.

ART. 1012. The succession in the property of a person becomes open at the moment of his death in his last domicile, reserving cases expressly excepted. •

The succession is governed by the law of the domicile in which it is opened, reserving the legal exceptions.

99, 1065, 20, 1086 par. 2, 1054, 1279. 34 to 37 of law 153 of 1887.

ART. 1013. The *delation* of an assignment, is the actual calling by the law to accept or repudiate it.

The inheritance or legacy is *deferred* to the heir or legatee at the moment of the death of the person whose succession is in question, if the heir or legatee is not called conditionally; or at the moment of the fulfillment of the condition, if the call be conditional.

Unless the condition be to not do something depending upon the sole will of the assign; as in such case the assignment is deferred at the moment of the death of the testator, the assign giving sufficient surety to restore the thing assigned with its accessions and fruits, in the event of a violation of the condition.

This, nevertheless, shall not take place when the testator shall have disposed that during the pendency of the condition forbidding the doing of something, the thing assigned belong to another assign.

757, 783, 1395, 1128, 1542.

ART. 1014. If the heir or legatee whose rights to the succession have not prescribed, should die before having accepted or repudiated the inheritance or legacy which has been deferred to him, he transmits to his heirs the right to accept such inheritance or legacy or to repudiate the same, even though he should die without knowing that it had been deferred to him.

This right cannot be exercised without accepting the inheritance of the person transmitting it.

1222, 1224 par. 2, 1472, 1285 par. 2, 1044.

ART. 1015. If two or more persons, called to succeed one another, are comprised in the provisions of article 95, none of them shall succeed to the property of the other.

ART. 1016. In every succession *mortis causa*, to carry into effect the dispositions of the deceased or of the law, the following shall be deducted from the estate or mass left by the deceased, including the hereditary credits:

1. The costs of the publication of the testament, if there be any, and the other costs connected with the opening of the succession.

2. The hereditary debts.

3. The fiscal taxes charged against the entire hereditary estate.

4. The forced assignments for support.

5. The conjugal portion which may be proper, in all orders of succession, excepting in that of the legitimate descendants. The remainder is the net estate disposable by the testator or by the law.

1281, 1411, 2495 Nos. 2 and 6, 2496, 411, 1227, 1045, 1236.

ART. 1017. The fiscal charges against the entire estate, extend to the revocable donations which are confirmed by the death.

The fiscal charges upon certain quotas or legacies, shall be charged to the respective assigns.

1176.

ART. 1018. Every person whom the law has not declared incapable or unworthy thereof is capable and worthy of succeeding.

ART. 1019. In order to be capable of succeeding, it is necessary to exist naturally at the time of the opening of the succession; unless one succeeds by the right of transmission, according to article 1014, as then it will be sufficient to be existing at the time of the opening of the succession of the person by whom the inheritance or legacy is transmitted.

If the inheritance or legacy be left under a suspensive condition, it shall also be necessary to exist at the moment the condition is fulfilled.

Nevertheless, assignments to persons who do not exist at the time of the opening of the succession, but who are expected to exist, shall not be invalidated for this reason, if said persons should exist before the expiration of thirty years subsequent to the opening of the succession.

Assignments offered as a reward to those rendering an important service shall be valid, with the same limitation, even though the person rendering such service did not exist at the moment of the death of the testator.

93, 799, 821, 94, 1447, 1536, 1136 par. 2, 800. 36, 30, 87, No. 2 of law 153 of 1887.

ART. 1020. Confraternities, guilds or establishments of any kind which are not juristic persons, are incapable of receiving any inheritance or legacy.

But if the purpose of the assignment should be the foundation of a new corporation or establishment, legal approval may be requested, and, if obtained, the assignment shall be valid.

1119, 1448, 633, 634. 24 to 27 of law 57 of 1887. 27, 80, 81, of law 153 of 1887.

ART. 1021.* Religious communities, corporations, associations and entities are incapable of receiving any inheritance or legacy, even though having the character of juristic persons.

ART. 1022. The priests or ministers of any religion or cult cannot receive by testament, under the title of an inheritance or legacy, not even as fiduciary executors, anything but that which, had there been no testament, they would have inherited *abintestato*. The same prohibition applies to the relatives, by consanguinity or affinity, within the third degree, of the priest who may have been the confessor of the testator during his last illness, or habitually during the last two years.

1119, 1068, No. 16. 84 of law 153 of 1887. The last paragraph of said article 84 states: "Article 1022 of the Civil Code is thus amended."

ART. 1023. Any disposition in favor of an incapacitated person shall be null, even though disguised under the form of an onerous contract, or by the interposition of a third person.

1120, 1191, 1029.

ART. 1024. An incapacitated person does not acquire the inheritance or legacy, until the actions which could be brought against him by those who might have an interest therein prescribe.

1032, 1326.

ART. 1025. The following are unworthy of succeeding the deceased as heirs or legatees:

1. He who has committed the crime of homicide against the person of the deceased, or has participated in this crime by some act or advice, or let the person die when able to save him.

2. He who committed a serious attempt upon the life, the honor or the property of the person whose succession is in question, or of his

* This article has been impliedly repealed by article 27 of law 57 of 1887, and the latter, in its turn, was amended, also impliedly, by article 84 of law 153 of 1887.

spouse or of any of his legitimate ascendants or descendants, provided that said attempt be established by means of a final sentence.

3. A consanguineous relative within the sixth degree inclusive who, when the person whose succession is in question was demented or in a state of destitution, failed to assist him when able to do so.

4. He who through force or fraud obtained some testamentary disposition from the deceased, or prevented him from making a will.

5. He who with fraudulent intent, has held or concealed a testament of the deceased; fraud being presumed by the mere act of the detention or concealment.

1036, 1266, 1268 par. 2, 1049 No. 2, 66.

ART. 1026. A male of legal age, who shall not have furnished information to the judicial authorities of the homicide committed on the person of the deceased, as soon as it was possible for him to do so, is unworthy of succeeding him.

This unworthiness shall cease, if the judicial authorities shall have begun proceedings in the case.

But this cause of unworthiness cannot be pleaded unless it shall appear that the heir or legatee is not married to the person by whose act or advice the homicide was committed, nor is of his ascendants or descendants, or related to him by consanguinity or affinity to the third degree inclusive.

ART. 1027. An ascendant or descendant who, being called to succeed *abintestato*, a person who has not reached the age of puberty, an insane person, or one deaf and dumb, had not requested the appointment or a tutor or curator for him, and had been guilty of this omission for an entire year, is unworthy to succeed him; unless it shall appear that it was impossible for him to do so either in person or through an attorney in fact.

If there should be several called to a succession, the diligence of one of them shall benefit the remainder.

Upon the expiration of the year, the aforesaid obligation shall fall to those called, in the second place, to the intestate succession.

The obligation does not extend to minors, nor in general to those who live under tutorship or curatorship, or under the marital power.

This cause of unworthiness disappears when the age of puberty is attained, or the insane person or deaf-mute assumes the administration of his property.

172, 546.

ART. 1028. A tutor or curator appointed by the testator, who shall excuse himself without legitimate cause, shall be unworthy of succeeding him.

An executor appointed by the testator who shall, without proving serious inconvenience, excuse himself, becomes also unworthy to succeed him.

This cause of unworthiness shall not extend to forced heirs or legatees with regard to their shares, nor to those whose excuses have not been accepted by the Judge, and who enter upon the discharge of their duties.

602 *et seq.*, 613, 1334, 1357, 1384, 1250.

ART. 1029. Finally, he who, knowing of the incapacity, has promised the deceased to cause his property, or a portion thereof, to be transferred, under any form whatsoever, to an incapacitated person, is unworthy to succeed him.

This cause of unworthiness cannot be pleaded against any person who, through reverential fear, may have been induced to make the promise to the deceased; unless he shall have proceeded to fulfill the promise.

1023, 1371, 1357, 1386, 1513 par. 2.

ART. 1030. The causes of unworthiness mentioned in the preceding articles cannot be pleaded against testamentary dispositions subsequent to the acts giving rise thereto, even though proof be offered that the deceased had no knowledge of these acts at the time of making his testament or subsequently.

ART. 1031. The unworthiness does not produce any effect whatsoever, if it be not declared by the court, at the instance of any of the persons interested in the exclusion of the unworthy heir or legatee.

If it be declared judicially, the unworthy person is obliged to make restitution of the inheritance or legacy, with its accessions and fruits.

ART. 1032. The unworthiness is purged after ten years' possession of the inheritance or legacy.

1024, 1326.

ART. 1033. The action of unworthiness does not pass against third persons in good faith.

ART. 1034. The inheritance or legacy of which its author made himself unworthy is transmitted to the heirs, but with the same vice of unworthiness as its author, for all the time still necessary to complete the ten years.

778, 2521, 1044 par. 2.

ART. 1035. The hereditary or testamentary debtors cannot oppose an exception of incapacity or unworthiness against the plaintiff.

ART. 1036. The incapacity or unworthiness does not deprive the heir or legatee excluded from the support which the law grants him; but in the cases of article 1025, he shall have no right to support.

125 par. 2, 414 par. 3, 1268.

TITLE II.

Rules Relating to Intestate Succession.

ART. 1037. The laws regulate the succession in the property of which the deceased has not disposed, or if he did dispose, did not do so in accordance with law, or his dispositions have not had effect.

1122, 1126 par. 2, 1158. 34 to 37, 126 *et seq.* of law 153 of 1887.

ART. 1038. The law does not consider the origin of the property to regulate the intestate succession or charge it with restitutions or reservations.

ART. 1039. Neither sex nor primogeniture is considered in intestate succession.

128 of law 153 of 1887.

ART. 1040. The following are called to the intestate succession; the legitimate descendants of the deceased; his legitimate ascendants; his legitimate collaterals; his natural children; his natural parents; his natural brothers and sisters; the surviving spouse, and the fisc.*

ART. 1041. An intestate succession is either by personal right, or by right of representation.

Representation is a fiction of the law by which it is supposed that a person has the place and consequently bears the degree of relationship and has the hereditary rights that his father or mother would have if either should not wish or not be able to succeed.

A father or mother who, had they been able to or wished to succeed, would have succeeded by the right of representation, may be represented.

1043, 1044. 36 of law 153 of 1887.

* This article has been amended with regard to the fisc, by article 85 of law 153 of 1887. See comment to art. 1051.

ART. 1042. Those who succeed by representation inherit in all cases *per stirpes*, that is to say, that whatever be the number of children who represent the father or the mother, they receive in equal shares the portion that would have fallen to the father or mother represented.

Those who do not succeed by representation succeed *per capita*, that is, they take among them in equal shares the portion to which the law calls them, unless the law itself shall establish a different division.

ART. 1043. Representation always takes place in the legitimate descending line of the deceased, in the legitimate descending line of his legitimate brothers and sisters and in the legitimate descending line of his natural children or brothers and sisters.

Excepting in these posterities, representation does not take place.

1041.

ART. 1044. An ascendant whose inheritance has been repudiated, may be represented.

1014, 1034, 1248.

ART. 1045. The legitimate children exclude all the other heirs, excepting the natural children, when the deceased shall have left both legitimate and natural children; the inheritance shall be divided into five parts, four for the legitimate children exclusively, and one for all the natural children. The latter may select freely between the inheritance or the support to which they may be entitled under the law.

The provisions of this article shall be understood as without prejudice to the conjugal portion due the surviving spouse.*

1016 No. 5, 1236.

ART. 1046. If the deceased shall not have left legitimate posterity, he shall be succeeded by his legitimate ascendants of the nearest degree, his spouse, and his natural children. The inheritance shall be divided into five parts, three for the legitimate ascendants, one for the spouse and the other for the natural children.

Should there be no surviving spouse or no natural children, the inheritance shall be divided into four parts; three for the legitimate ascendants and the other for the natural children or for the spouse.

Should there be neither spouse nor natural children, the entire inheritance shall belong to the legitimate ascendants.

Should there be only one ascendant in the nearest degree, he shall

* This article was expressly repealed by art. 45 of law 57 of 1887, and replaced by art. 28 of the same law. Notwithstanding this express repeal of this article, law 153 of 1887, article 88, again repeals article 1045, and also 28 of law 57. The place of the two articles repealed was taken by art. 86 of said law 153.

succeed to all of the property or to the entire hereditary portion of the ascendants.

1043 par. 2, 1050 last par.

ART. 1047. If the deceased should not have left legitimate descendants or ascendants, he shall be succeeded by his legitimate brothers, his spouse, and his natural children: the inheritance shall be divided into three parts, one for the legitimate brothers, another for the spouse and another for the natural children.

Should there be no spouse, or no natural children, the legitimate brothers shall succeed to one-half the property, and the natural children or the spouse to the other half.

Should there be no natural children, nor surviving spouse, the brothers shall receive the entire inheritance.

Among the legitimate brothers referred to in this article shall be included even those who are such only on the father's side or on the mother's side, but the portion of the paternal or maternal brother shall be one-half the portion of the carnal brother.

Should there be no carnal brothers, the legitimate brothers, paternal or maternal, shall receive the entire inheritance or the entire hereditary portion of the brothers.

1050 last par.

ART. 1048. If the deceased shall not have left descendants, ascendants nor legitimate brothers, the surviving spouse shall receive one-half the estate and the natural children the other half.

In the absence of the latter, the spouse shall receive all the property, and, in the absence of the spouse, the natural children shall take it.

ART. 1049.* In the absence of legitimate descendants, ascendants and brothers, of a surviving spouse and natural children, the other legitimate collaterals shall succeed the deceased, according to the following rules:

1. The collateral relative or relatives of the nearest degree shall always exclude the others.
2. The rights of succession of the collaterals does not extend beyond the eighth degree.
3. Collaterals of half-blood, that is, those who are relatives of the deceased on the side of the father or on the side the mother only, shall enjoy the same rights as the collaterals of the whole blood, that is to say, as those who are relatives of the deceased on the side of the father and on the side of the mother.

* This article has been repealed by article 88 of law 153 of 1887, and substituted by article 87 of said law.

ART. 1050. If a natural child shall die without leaving legitimate descendants, his inheritance shall be deferred, according to the following order and rules:

First, to the natural children.

In the second place, to the parents. If one of them only should have the legal quality of natural father or mother, the inheritance shall be deferred to him or her only.

In the third place, to such of the brothers as may be legitimate or natural children of the same father, of the same mother, or of both. All of them shall succeed simultaneously; but the carnal brother shall receive double the portion of the paternal or maternal brother.

The quality of a legitimate child shall not give a right to a larger portion than that of him who is only a natural child of the same father or mother.

Should there be a surviving spouse, he shall participate with the parent or natural brothers; in participation with the former or one of them, he shall receive one-quarter of the property, and in participation with one or more of the latter, one-half.

1046 par. 2, 1047 par. 2.

ART. 1051.* In the absence of all the intestate heirs, designated in the preceding articles, the fisc shall succeed.

1040. 81 par. 1, of law 153 of 1887.

ART. 1052. When one and the same patrimony involve both a testamentary and an intestate succession, the testamentary dispositions shall be executed, and the residue shall be awarded to the intestate heirs according to the general rules.

But those who succeed both by testament and *ab intestato*, shall impute to the portion due them *ab intestato* that which they may receive under the testament, without prejudice to retaining the entire testamentary portion, if it exceeds the other.

The express will of the testator shall prevail above all in so far as legally proper.

1009 par. 2, 1249.

ART. 1053. Foreigners are called to intestate successions opened in the Territory, in the same manner and according to the same rules as the members thereof.

ART. 1054. In the intestate succession of a foreigner dying within or without the Territory, the members thereof shall have, under the title

* This article has been expressly repealed by art. 45 of law 57 of 1887; nevertheless, art. 85, par. 2, of law 153 of 1887, again repeals said art. 1051.

of an inheritance, a conjugal portion or support, the same rights that according to the laws in force in the Territory they would have in the intestate succession of a member of the Territory.

The members of the Territory interested may request that they be awarded from the property of the foreigner existing in the Territory, all that is due them in the succession of the foreigner.

This shall also be applied, in a necessary case, to the succession of a member of the Territory who may leave property in a foreign country.

1012, 19 No. 2.

TITLE III.

Of the Form of Testaments.

CHAPTER I.

Of the Testament in General.

ART. 1055. A *testament* is a more or less solemn act, by which a person disposes of all or of a part of his property in order that it shall have full effect after his death, retaining the power to revoke the dispositions contained therein during his lifetime.

1059, 1010.

ART. 1056. Every donation or promise that does not become perfect and irrevocable except by the death of the donor or promissor, is a testament, and must conform to the same formalities as are required in testaments. Donations and promises between husband and wife are excepted; these, although subject to revocation, may be made under the form of contracts *inter vivos*.

1057, 1194, 1196, 1195.

ART. 1057. All testamentary dispositions are essentially subject to revocation, even though the testator shall express in his testament the determination not to revoke them. Clauses repealing his future dispositions shall be considered as not written, even though they be confirmed by oath.

If in a former testament an order shall have been made that its revocation should not be valid unless made with certain words or marks, this disposition shall be considered as not written.

1194, 1195.

ART. 1058. The certificates (*cédulas*) or papers to which the testator may make reference in the testament, shall not be considered as parts of the latter, even though the testator should so order; nor shall they have more value than what they would be worth without this circumstance.

1368, 1369.

ART. 1059. A testament is an act of a single person.

All dispositions contained in a testament executed by two or more persons at one time, whether for the mutual benefit of the parties thereto, or for the benefit of a third person, shall be void.

ART. 1060. The power to testate cannot be delegated.

ART. 1061. The following are not able to testate:

1. A person who has not attained the age of puberty.
 2. He who is under interdiction on account of insanity.
 3. He who is not at the time in his sound mind on account of intoxication or other cause.
 4. He who cannot verbally or in writing express his will clearly.
- The persons not included in this enumeration are able to testate.

1118.

ART. 1062. A testament executed during the existence of any of the causes of disqualification mentioned in the preceding article is null and void, even though subsequently the cause shall cease to exist.

And, on the other hand, a valid testament does not cease being so by reason of any of these causes of disqualification arising later.

ART. 1063. A testament in which force shall have been employed in any manner whatsoever, is null and void in all its parts.

1508, 1513.

ART. 1064. A testament is solemn and less solemn (*menos solemne*). A *solemn* testament is that in which all the formalities ordinarily required by the law have been observed. A *less solemn* or *privileged* testament is that in which some of these formalities may be omitted, by reason of special conditions, expressly determined by the law.

A solemn testament is either opened or sealed.

An *open*, *nuncupative* or *public* testament is that in which the testator communicates its dispositions to the witnesses, and to the notary, if one has been present; and a *sealed* or *secret* testament is that in which it is

not necessary that the witnesses and the notary have any knowledge of such dispositions.

See the three chapters following. 34 of law 153 of 1887.

ART. 1065. The opening and publication of a testament shall take place before the Judge of the last domicile of the testator; but if the notary and the witnesses thereto who must acknowledge their signatures should not be there, the acts shall take place before the Judge designated by the laws of procedure.

1012, 1085, 1086, 1082.

ART. 1066. Whenever it shall become necessary for a Judge to proceed to the opening and publication of a testament, he shall assure himself first of the death of the testator. Cases in which, according to the law, death is to be presumed, are excepted.

97, 99, 1082.

CHAPTER 2.

Of the Solemn Testament and Especially of that Executed in the Territories.

ART. 1067. A solemn testament is always in writing.

1087.

ART. 1068. The following cannot be witnesses to a solemn testament executed in the Territories:

1. Women.
2. Persons under eighteen years of age.
3. Those who are under interdiction by reason of insanity.
4. All those at the time deprived of their reason.
5. The blind.
6. The deaf.
7. The dumb.
8. Those sentenced to any of the penalties designated in article 315, subdivision 4, and, in general, those who shall be disqualified to be witnesses by a final decision.
9. The clerks of the Notary who authenticates the testament.
10. Foreigners not domiciled in the Territory.
11. Persons who do not understand the language of the testator, without prejudice to the provisions of article 1081.
12. The ascendants, descendants and relatives within the third degree of consanguinity, or second of affinity of the testator or of the public official who authorizes the testament.

13. The husband of the testatrix.

14. The employees or domestics of the testator, of his spouse, of the official who authorizes the testament, and of the other persons comprised in numbers 12 and 17.

15. Those who are related or connected to another of the witnesses in the degrees and character referred to in numbers 12 and 14.

16. The priest who may have been the habitual confessor of the testator, and he who shall have received his confession during his last illness.

17. The heirs and the legatees, and, in general, all those who may be directly benefited by the testament.

At least two of the witnesses must be domiciled in the place where the testament is executed, and one, at least, must be able to read and write, when there are three witnesses only, and two when there are five present.

127, 2587.

ART. 1069. If any of the causes of disqualification, mentioned in the preceding article, should not be apparent from the appearance or conduct of a witness, and it should be generally unknown in the place where the testament is executed, a contrary opinion being based upon positive and public acts, the testament shall not be invalidated by the real incompetency of the witness.

But the putative competency can serve but one of the witnesses.

ART. 1070. A solemn and open testament must be executed before the respective notary or his substitute, and three witnesses.

All that may be stated in this Code regarding the Notary, shall apply also to his substitute in service, in a proper case.

2550, 2551, 1071.

ART. 1071. In places where there is no Notary or where this official is absent, the nuncupative solemn testament may be executed before five witnesses having the qualifications required by this Code.

ART. 1072. That which essentially constitutes an open testament, is the act by which the testator informs the Notary, if there be any, and the witnesses, of his dispositions.

The testament shall be executed in all its parts before the testator, the same notary, if there be one, and the same witnesses.

ART. 1073. The testament shall contain a statement of the name and surname of the testator; his place of birth, the nation to which he belongs; whether he has a residence in the Territory or not, and, if he has, the place of his domicile; his age; the fact that he is of sound mind; the names of the persons with whom he may have contracted marriage, of the children had or legitimized during each marriage, and of the natural children of the testator, stating whether they are alive or dead; and the name, surname and domicile of each of the witnesses.

These statements shall conform to what the testator and the witnesses may respectively declare. There shall be stated furthermore, the place, day, month and year of the execution, and the name and surname of the Notary, if one attends.

1083 par. 2.

ART. 1074. An open testament may have been written in advance.

But whether the testator has it already written, or whether it be written at one or more acts, it shall be read in full aloud by the Notary, if there be any, or, in the absence of a Notary, by one of the witnesses designated by the testator for this purpose.

During the reading of the testament, the testator shall be present, and the persons whose presence is necessary shall hear the tenor of his dispositions.

ART. 1075. The act shall be closed by the signatures of the testator and the witnesses, and by that of the Notary, if there be one.

If the testator should not know how or be unable to sign, this fact shall be mentioned in the testament, the cause being stated.

If any of the witnesses should suffer from the same inability, one of the other witnesses shall sign for him, at his request, mention being made of this fact.

1080 par. 5.

ART. 1076. A blind person can testate nuncupatively only and before a Notary or official acting as such. His testament shall be read aloud twice; the first time by the Notary or official, and the second time by one of the witnesses, selected for the purpose by the testator. Special mention of this formality shall be made in the testament.

ART. 1077. If the testament shall not have been executed before a notary, but before five witnesses, its publication shall be necessary, in the following form:

The Judge of competent jurisdiction shall cause to appear before him the witnesses to acknowledge their signatures and that of the testator.

If one or more of them should fail to appear on account of absence or for any other reason, it shall be sufficient that the attesting witnesses present identify the signature of the testator, their own signatures and those of the absent witnesses.

In a necessary case, whenever the Judge shall deem it advisable, the signatures of the testator and absent witnesses may be verified by sworn statements of other trustworthy persons.

Thereupon, the Judge and his secretary shall affix their rubrics to each page of the testament, and after having been declared a nuncupative testament by the Judge, stating its date, he shall order it transmitted

with the record to the respective Notary, after the proper registration thereof.

ART. 1078. A sealed solemn testament must be executed before a Notary and five witnesses.

ART. 1079. He who is unable to read and write, cannot execute a sealed testament.

1075.

ART. 1080. That which essentially constitutes a sealed testament is the act by which the testator presents to the Notary and to the witnesses, a sealed instrument, declaring aloud, and in such manner that the Notary and the witnesses may see, hear and understand (excepting in the case of the following article), that said instrument contains his testament. The dumb may make such declaration by writing it before the Notary and the witnesses.

The testament must be signed by the testator. The envelope containing the testament shall be sealed in advance or will be sealed, in such manner that the testament cannot be removed without tearing the envelope.

The testator is at liberty to employ a seal or mark, or any other means to insure the inviolability of the envelope.

The notary shall state upon the envelope, under the heading of *testament*, the fact that the testator was in his sound mind; the name, surname and domicile of the testator and of each of the witnesses, and the place, day, month and year of the execution.

The execution is closed with the signatures of the testator, of the witnesses and of the Notary, upon the envelope.

If the testator should be unable to sign at the time of the execution, a person who is not an attesting witness shall do so for him, and if one or more of the witnesses should not know how or be unable to sign, others shall sign for those who cannot sign, so that seven signatures shall always appear on the envelope: that of the testator, those of the five witnesses, and that of the Notary.

During the execution of the testament, there shall be present, in addition to the testator, the same Notary and the same witnesses, and there shall be no interruption whatsoever, excepting during the brief intervals that an accident shall so require.

1083 par. 2.

ART. 1081. When the testator cannot understand or be understood *viva voce*, he can execute a sealed testament only.

The testator shall write, in his own hand, upon the envelope, the word *testament*, or its equivalent in the language he may prefer, and shall in

the same manner make the designation of his person, stating, at least, his name, surname and domicile, and the Nation to which he may belong; and as to the rest, the provisions of the preceding article shall be observed.

1083 par. 2.

ART. 1082. A sealed testament, before being executed, shall be presented to the Judge.

The testament shall not be opened until after the Notary and the witnesses acknowledge before the Judge their signatures and that of the testator, declaring, furthermore, that in their opinion it is closed, sealed or marked, as it was at the time of the delivery.

If all the witnesses cannot be present, it shall suffice that the Notary and the attesting witnesses present, identify their signatures and that of the testator, and verify those of those absent.

If the Notary or official who authorized the testament cannot appear, such Notary as the Judge may select shall replace him in the proceedings for the opening thereof.

In a necessary case, and whenever the Judge shall deem it advisable, the signatures of the Notary and absent witnesses may be verified, as in the case of the third paragraph of article 1077.

1065, 1066.

ART. 1083. A solemn testament, whether opened or sealed, in which any of the requisite formalities prescribed by the preceding articles, are omitted, shall be of no value.

Nevertheless, when one or more of the designations prescribed in article 1073, in the fifth paragraph of article 1080, and in the second of art. 1081, should be omitted, the testament shall not be null by reason thereof, if there be no doubt as to the personal identity of the testator, Notary or witness.

CHAPTER 3.

Of the Solemn Testament Executed in the States or in a Foreign Country.

ART. 1084. A written testament, executed in any of the States or in a foreign country, shall be valid in the Territories if, with regard to formalities, it be shown that it conforms to the laws of the country or State in which it was executed, and if in addition the authenticity of the respective instrument is proved in the ordinary form.

ART. 1085. A testament executed in any of the States or in a foreign country shall likewise be valid in the Territories, provided that the following requisites are present:

1. That the testator be a Colombian, or, if a foreigner, that he have a domicile in the Territory.

2. That it be authorized by a Diplomatic Minister of the United States of Colombia or of a friendly nation, by a Secretary of Legation holding a commission as such, issued by the President of the Republic, or by a Counsl holding a patent as such; but it shall not be valid if authorized by a Vice-consul. In the testament special mention shall be made of the office, and of the said commission and patent.

3. That the witnesses be Colombians or foreigners domiciled in the city in which the testament is executed.

4. That the rules governing solemn testaments, executed in the Territories, be observed as to the rest.

5. That the instrument bear the seal of the Legation or Consulate.

6. That the testament which has not been executed by the head of a legation, bear the visée (*visto bueno*) of said head, if there be any; if the testament be open, at the foot, and if closed, upon the wrapper; and that said head place his rubric at the beginning and at the end of each page, when the testament is an open one.

7. That there be sent at once by the head of the legation, if there be one, and if not, directly by the Consul, a copy of the open testament, or of the superscription of the sealed one, to the Secretary of Foreign Affairs of the Republic, who, after certifying to the signature of the head of the Legation, or of the Consul, in a proper case, shall transmit the copy to the Prefect of the respective territory.

1012, 1065.

ART. 1086. Whenever the proceedings prescribed in the preceding article are had, the Chief of the Territory shall forward the copy to the Judge of the Circuit of the last domicile the deceased may have had in the Territory, in order that said copy may be embodied in the protocols of a Notary of the said domicile.

Should no domicile of the testator be known in the Territory, the testament shall be forwarded to the Prefect or the Judge of the Circuit of the capital of the Territory, for incorporation in the protocols of the Notarial office that the Judge may designate.

1012, 1065.

CHAPTER 4.

Of Privileged Testaments.

ART. 1087. The following are privileged testaments:

1. An oral testament.
2. A military testament.
3. A maritime testament.

1092, 1098, 1100, 1103, 1105, 1112.

ART. 1088. In privileged testaments, any person of sound judgment, whether male or female, over eighteen years of age, who can see, hear and understand the testator, and not having the disqualifications mentioned in No. 8 of article 1068, may serve as a witness. It is requisite, furthermore, in written privileged testaments, that the witnesses be able to read and write.

The putative competency shall be sufficient, in accordance with the provisions of article 1069.

ART. 1089. In privileged testaments, the testator shall declare expressly that it is his intention to dispose by testament; the persons whose presence is necessary shall be the same throughout from the beginning to the end; and the act shall be continuous, or only interrupted during the brief intervals made necessary by some accident.

These formalities, and those mentioned in the following articles, shall be the only ones necessary.

ART. 1090. An oral testament shall require the presence of three witnesses, at least.

ART. 1091. In an oral testament, the testator shall make his statements and dispositions aloud, so that all may see, hear and understand him.

ART. 1092. An oral testament shall take place only in cases of danger so imminent to the life of the testator, that there appears to be no manner or time in which to execute a solemn testament.

1103, 1110, 1112.

ART. 1093. An oral testament shall have no value whatsoever if the testator should die after thirty days subsequent to the execution; or if, having died before, the testament shall not have been reduced to writing, with the formalities which will be stated, within thirty days next following the death

1064 first paragraph, 1270 par. 2, 1101, 1109, 1110.

ART. 1094. In order to reduce an oral testament to writing, the Judge of the Circuit in which it may have been executed, at the instance of any

person who may have an interest in the succession, with a citation of the other persons interested, residing in the same Circuit, shall receive the sworn statements of the persons present as attesting witnesses, and of all other persons whose testimony may appear to him pertinent to elucidate the following points:

1. The name, surname, and domicile of the testator, his place of birth, the Nation to which he belonged, his age, and the circumstances which made him believe that his life was in imminent danger.

2. The name and surname of the attesting witnesses, and their place of domicile.

3. The place, day, month and year of the execution.

ART. 1095. The attesting witnesses shall depose upon the following points:

1. Whether the testator appeared to be in his sound mind.

2. Whether he expressed the intention of testating before them.

3. His testamentary declarations and dispositions.

ART. 1096. The statements referred to in the preceding articles shall be transmitted to the Judge of the last domicile, if he did not himself receive the statements; and the judge, if he should find that the formalities prescribed have been observed, and that the last will of the testator is clearly established by the statements, shall decide that, in accordance with said statements, the testator has made the following declarations and dispositions (enumerating them); and he shall decree that said declarations and dispositions be valid as the testament of the deceased, and that his decree be filed as such.

Only such testamentary declarations and dispositions shall be so considered as to which the witnesses who were present by way of formality, agree.

ART. 1097. The testament embodied in a judicial decree, which has been filed in a protocol, may be impugned in the same manner as any other authentic testament.

ART. 1098. During a time of war, the testaments of soldiers and of other persons attached to a body of troops of the Territory of the Republic, as also those of volunteers, hostages and prisoners belonging to said body, and those of the persons accompanying or serving any of these persons, may be received by a Captain, or by an officer of a higher rank than Captain, or by an Intendant of the Army (*Intendente de ejército*), Commissary (*Comisario*) or Auditor of War (*Auditor de guerra*).

If the person desirous of testating, should be sick or wounded, his testament may be received by the Chaplain, physician or surgeon attending him; and if with a military detachment, by the officer commanding it, even though he be of a rank lower than Captain.

ART. 1099. The testament shall be signed by the testator, if he should know how and be able to sign, by the official who received it, and by the witnesses.

If the testator should not know how or not be able to sign, this fact shall be stated in the testament.

ART. 1100. In order to make a military testament, it shall be necessary that the testator be on a military expedition, at the time on a march or campaign against the enemy, or in the garrison of a place besieged at the time.

1103.

ART. 1101. If the testator should die before the expiration of ninety days next following the date upon which, with respect to him, the conditions permitting a military testament shall have ceased, his testament shall be valid, as if it had been executed in the ordinary form.

If the testator should survive this period, the testament shall lapse

1270 par. 2, 1093, 1109, 1110.

ART. 1102. In order that a military testament may be valid, it is necessary that it bear at its foot the visée of the Superior Commander of the expedition or of the Commander of the garrison, should it not have been executed before the said Commanders, that it be rubricated at the beginning and at the end of each page by said Superior or garrison Commander, and that the signature of the latter be certified to by the Secretary of War and Navy of the Republic, if the body of troops should be in the service of the Nation, or by the Secretary of the Prefect of the Territory, if said body should be operating in said Territory only.

In order that this testament may be incorporated in the protocol of public instruments, the Secretary to the Prefect shall transmit it, after all legal formalities have been complied with, to the Notary of the last domicile of the testator, and if the latter should be ignored, or not known, to the Notary of the capital of the Territory. The transmission shall be made through the respective Superior Judge.

ART. 1103. When a person who can make a military testament shall be in imminent danger, he may make a verbal testament in the manner above prescribed; but such testament shall lapse in the event of the testator surviving the danger.

The examination referred to in articles 1094 and 1095 shall be held as soon as possible before the Auditor of War or the person acting as such.

The provisions of the preceding article shall be observed in the transmission of the result of the examination to the Judge of the last domicile.

1100.

ART. 1104. If a person able to make a military testament, should prefer to execute a closed or sealed testament, the formalities prescribed in article 1080 shall be observed, any of the persons mentioned at the end of the first paragraph of article 1098 acting as authenticating official.

The superscription upon the envelope shall be viséed, like the testament, in the case of article 1102; and in forwarding it, the provisions of the said article shall also be observed.

1100.

ART. 1105. A maritime testament may be made on board a Colombian man-of-war on the high seas.

It shall be received by the Commander or by the second in command, in the presence of three witnesses.

If the testator should not be able or not know how to sign, this fact shall be stated in the testament.

A duplicate of the testament shall be made with the same signatures as the original.

1110, 1112.

ART. 1106. The testament shall be kept among the most important papers of the vessel, and a note of its execution shall be made upon the log of the vessel.

ART. 1107. If the vessel, before returning to the United States of Colombia, should stop at a foreign port where there is a Colombian Diplomatic or Consular Agent, the Commander shall deliver to him a copy of the testament, taking a receipt therefor, and making a note thereof upon the log, in order that it may have the effects and requisites referred to in paragraphs 5, 6, and 7, of article 1085 and of article 1086.

If the vessel should arrive in Colombia first, said copy shall be sent under the proper safeguards, to the National Executive Power in order that it may produce the effects mentioned in the preceding paragraph.

ART. 1108. Not only may officers and members of the crew make testaments in the form prescribed in article 1105, but any other persons on board a Colombian man-of-war on the high seas, may do so.

1112.

ART. 1109. A maritime testament shall not be valid, unless the testator shall have died before landing, or before the expiration of ninety days next after the landing.

By landing shall not be understood a short stay on land and re-embarkation on the same vessel.

1270 par. 2, 1093, 1101, 1110.

ART 1110. In case of imminent danger, an oral testament may be made on board a man-of-war on the high seas, the provisions of article 1103 being observed; and the testament shall lapse if the testator should survive the danger.

The examination referred to in articles 1094 and 1095 shall be conducted by the Commander, or his second in command, and the provisions of article 1103 shall be observed in its transmission to the Judge through the Secretary of State.

Articles cited and 1112.

ART. 1111. If a person in a position to draw a maritime testament should prefer to execute a sealed one, the formalities prescribed in article 1080 shall be observed, the Commander of the vessel or his second in command acting as authenticating officer.

Furthermore, the provisions of article 1106 shall be observed, and a copy of the superscription upon the envelope shall be sent to the Secretary of State to be placed in a protocol, as a testament, according to article 1107.

ART. 1112. Upon merchant vessels under the Colombian flag, testaments may be made only in the form prescribed in article 1105, the testament being received by the Captain or his second in command, or the pilot, the provisions of article 1107 being also observed.

TITLE IV.

Of Testamentary Assignments.*

CHAPTER I.

General Rules.

ART. 1113. Every testamentary assign must be a certain and determined person, natural or juristic, whether determined by his name or by clear indications in the testament. Otherwise, the assignment shall be considered as not written.

Nevertheless, assignments for charitable purposes shall be valid, even though not for determined persons.

Assignments made to a charitable institution without designating it, shall be given to such charitable institution as the Chief of the Territory may designate, preference being accorded to one of those of the neighborhood or residence of the testator.

What is left for the *soul* of the testator, without further specifying its purpose, shall be understood as left to a charitable institution, and shall be subject to the provision of the preceding paragraph.

What is left in general to the *poor*, without determining the mode of its distribution, shall be applied to the charitable or eleemosynary institution situated in the place of the domicile of the testator, if there be an institution of this character therein, and otherwise it shall be applied to the charitable or eleemosynary institution nearest to said domicile, excepting in the following cases:

1. When the testator shall expressly prohibit it.
2. When he shall have expressed his intention of leaving it to the poor of a certain place, where there is no public charitable or eleemosynary institution.

1123, 1127, 1473. 129, 130 of law 153 of 1887.

ART. 1114. The amounts received as a consequence of the provision contained in the preceding article, shall be invested, whatever the amount be, and the interest thereon shall be devoted to the expenses of the institutions to which they may pertain.

ART. 1115. What must be distributed among the poor of a specific place, in accordance with article 1113, shall be done in the presence of the "Alcalde" and Municipal "Personero" of the District.

The distribution which may be made in accordance with the provisions of the preceding article shall be made the subject of a record stat-

* See note to art. 1010 page 219.

ing the date upon which the distribution took place, the amount distributed and the names and surnames of the beneficiaries. This record, which shall be subscribed by the officials who may have taken part in the distribution, by the distributing executors, heirs or legatees, and by such of the beneficiaries who are able to affix their signatures, shall be attached to the inventories, without which requisite the latter shall not be approved by the Judge.

ART. 1116. An error in the name or quality of the assign does not vitiate the disposition, if there be no doubt as to the person.

1512, 746.

ART. 1117. An assignment that seems to be founded upon an error of fact, so that it is evident that without this error it would not have been made, shall be considered as not written.

Captatious dispositions shall not be valid.

By such shall be understood those by which the testator assigns a part of his property under the condition that the assign leave him a portion of his own property by testament.

1510, 1190, 2313.

ART. 1118. No testamentary disposition is valid which the testator has not expressed in any manner but by *yes* or *no*, or by a sign of affirmation or negation, in answer to a question.

1061 No. 5.

ART. 1119. No testamentary disposition in favor of the Notary who authorizes the testament, or of the official acting as such, or of the spouse of said Notary or official, or of any of the ascendants, descendants, brothers and sisters, brothers- and sisters-in-law or salaried servants of the same, shall be valid.

The same applies to dispositions in favor of any of the witnesses.

1024.

ART. 1120. A creditor whose credit appears in the testament only, shall be considered as a legatee for the provisions of the preceding article.

1058, 1191.

ART. 1121. The selection of an assign, whether absolutely, or whether from a certain number of persons, shall not depend upon the mere will of another.

1125.

ART. 1122. What is left indiscriminately to the relatives, shall be understood as left to the consanguineous relatives of the nearest degree, according to the order of intestate succession, the right of representation taking place, in accordance with the legal rules; unless at the date of the testament there shall have been only one of this degree, as in such case those of the next degree shall be considered as called at the same time.

1037.

ART. 1123. If the assignment should be conceived or written in such terms that it is not known which of two or more persons the testator desired to designate, none of said persons shall be entitled thereto.

1113, 1532 par. 3, 1537 par. 2. 134 of law 153 of 1887.

ART. 1124. Every assignment must be either under a universal title or of determinate species, or which may be clearly determined from the indications in the testament, or of generic things and sums which may be or are also easily determined. Otherwise it shall be considered as not written.

However, if the assignment be destined to a charitable purpose designated in the testament, without determining the quota, amount or species to be devoted thereto, the assignment shall be valid and the quota, amount or specie shall be determined, taking into consideration the nature of the object, the other dispositions of the testator and the extent of the patrimony, in the part which is freely disposable by the testator.

The Judge shall make the determination, after hearing the municipal "Personero" and the heirs, and conforming in so far as possible, to the intention of the testator.

1008, 1170, 1532 par. 3, 1113 par. 2, 1145 par. 3, 795.

ART. 1125. If the execution of an assignment should be left to the will of an heir or legatee, to whose benefit it would be to refuse it, the heir or legatee shall be obliged to carry it out, unless he shall prove a just cause for not doing so. If the refusal of the assignment should not redound to the benefit of the heir or legatee, he shall not be obliged to state reasons for his decision, whatever it be.

The benefit of an ascendant or descendant, of a spouse or of a brother or sister, or brother- or sister-in-law, shall be considered, for the purposes of this provision, the benefit of said heir or legatee.

1538 par. 2.

ART. 1126. An assignment which, on account of the absence of the assign, is transferred to another person, by accretion, substitution

or any other cause, shall carry with it all transferable obligations and charges, and the right to accept or repudiate it separately.

An assignment that may have been repudiated on account of being excessively encumbered, by all the persons successively called thereto by the testament or the law, shall be deferred in the last place to the persons in whose favor the charges may have been constituted.

1037.

ART. 1127. The clearly manifested will of the testator shall prevail over the rules given in this title regarding the interpretation and effect of testamentary dispositions, provided it be not opposed to legal requisites or prohibitions.

To ascertain the will of the testator, the substance of the dispositions, rather than the words used, shall be considered.

1418 last par., 1618

CHAPTER 2.

Of Conditional Testamentary Assignments.

ART. 1128. Testamentary assignments may be conditional.

A conditional assignment is, in a testament, that which depends upon a condition, that is to say, upon a future and uncertain event, in such manner that the assignment according to the intention of the testator shall not be valid if the positive event does not occur, or if the negative event does occur.

Conditional testamentary assignments are subject to the rules given in the title on conditional obligations, with the exceptions and modifications which follow.

1530 *et seq.*

ART. 1129. A condition which consists in a present or past event does not suspend the execution of the disposition. If it exists or has existed, it shall be considered as not written; if it does not exist or has not existed, the disposition is void.

The past, present and future, shall be understood with relation to the moment of making the testament unless otherwise stated.

ART. 1130. If the condition which is imposed as for the future, consists in an event which took place during the life of the testator, and the testator at the time of making his will knew it, and the event is one which may be repeated, it shall be presumed that the testator requires its repetition; if the testator at the time of making his will knew it, and the event is of those which cannot be repeated, the condition shall

be considered as fulfilled; and if the testator was not aware of it, the condition shall be considered as fulfilled, whatever be the character of the event or act.

1140, 1538.

ART. 1131. A condition not to contest the testament, imposed upon an assign, does not extend to proceedings for annulment, for some defect in its form.

ART. 1132. The condition imposed upon the heir or legatee not to contract marriage, shall be considered as not written, unless it be limited to a prohibition from contracting it before the age of twenty-five years or under.

ART. 1133. A condition of remaining in a state of widow or widowerhood shall, likewise, not be considered as imposed; unless the assign should have one or more children from the former marriage, at the time the assignment is deferred to him or her.

ART. 1134. The preceding articles are not opposed to providing for the support of a woman while she remains single or a widow, by leaving her for such time a right of usufruct, of use, or of habitation, or a periodical pension.

ART. 1135. The condition to marry or not marry a determined person, and that of adopting any state or profession, permitted by the laws, even though incompatible with the state of matrimony, shall be valid.

ART. 1136. Testamentary assignments, under a suspensive condition, do not confer upon the assign any right whatsoever, during the pendency of the condition, except that of requesting the necessary judicial orders for their preservation.

If the assign shall die before the fulfillment of the condition, he does not transmit any right whatsoever.

Upon the fulfillment of the condition, he shall not be entitled to the fruits that have accrued during the intervening time, unless the testator shall have granted them to him expressly.

820, 1549 pars. 2 and 3, 1019 par. 2.

ART. 1137. Conditional dispositions which establish *fidei commissa* and grant a fiduciary ownership are governed by the Title Of *Fiduciary Property*.

CHAPTER 3.

Limited Testamentary Assignments.

ART. 1138. Testamentary assignments may be limited to *terms* or *days*, upon which the actual enjoyment or extinction of a right depends;

and they shall then be subject to the rules given in the *Title Of Limited Obligations*, with the following explanations:

1551, 1536, 801.

ART. 1139. The day is certain and determined, if it must necessarily arrive, and it is known when, such as such a day of such a month and year, or so many days, months, or years after the date of the testament or the death of the testator.

It is certain but undetermined, if it must necessarily arrive, but it is not known when; as the day of the death of a person.

It is uncertain but determined, if it may or may not arrive; but supposing that if it should arrive it is known when, as the day a person attains twenty-five years of age.

Finally, it is uncertain and undetermined, if it be not known if it will arrive, nor when, as the day a person marries.

ART. 1140. What is assigned from a day that arrives before the death of the testator, shall be understood as assigned for after his days and shall not be due until the succession is opened.

1130.

ART. 1141. An uncertain and undetermined day is always a real condition, and is subject to the rules governing conditions.

ART. 1142. An assignment from a determined and certain day gives the assign, from the moment of the death of the testator, the property of the thing assigned, and the right to alienate and transfer it; but not to demand it before the arrival of the day.

If the testator expressly impose the condition of the existence of the assign on that day, it shall be subject to the rules governing conditional assignments.

810, 820.

ART. 1143. An assignment from a certain but undetermined day is conditional, and involves the condition of the existence of the assign on that day.

If it be known that the assign will be in existence on that day (as when the assignment is in favor of a permanent establishment), the provisions of the first paragraph of the preceding article shall apply.

799, 1019.

ART. 1144. An assignment from an uncertain day, whether determined or not, is always conditional.

ART. 1145. An assignment to a certain day, whether determined or not, constitutes a usufruct in favor of the assign.

An assignment of periodical prestations cannot be transferred *mortis causa*, and terminates, as does the usufruct, upon the arrival of the day, and by the natural death of the beneficiary.

If it be in favor of a corporation or foundation, it cannot last more than thirty years.

793 No. 2, 800, 825, 829, 94, 863, 865, 415, 1146.

ART. 1146. An assignment to a day uncertain but determined, united to the existence of the assign, constitutes a usufruct; unless it shall consist of periodical prestations.

If the day be united to the existence of another person than the assign, the usufruct shall be considered as granted to the date on which, the other person being living, the day would arrive for such person.

2297 and articles cited.

CHAPTER 4.

Of Modal Assignments.

ART. 1147. If anything be assigned to a person in order that he hold it as his own, with the obligation of applying it to a special purpose, as that of making certain works or assuming certain charges, this application is a *mode* and not a suspensive condition. The mode, consequently, does not suspend the acquisition of the thing assigned.

ART. 1148. In modal assignments the *resolatory clause* is that which imposes the obligation of making restitution of the thing and the fruits, if the mode be not complied with.

A resolatory clause shall not be considered as involved, when the testator does not express it.

1536, 1546.

ART. 1149. In order that the thing assigned subject to a mode may be acquired, it is not necessary that a bond or security be given to guarantee restitution in the event the mode be not fulfilled.

834, 835.

ART. 1150. If the mode be to the benefit of the assign exclusively, it does not impose any obligation whatsoever, unless it carries a resolatory clause.

1148.

ART. 1151. If the mode be from its nature impossible, or inducive of an illegal or immoral act, or conceived in unintelligible terms, the disposition shall not be valid.

If the mode, without an act or fault on the part of the assign, is impossible only in the special form prescribed by the testator, it may be fulfilled in some other form which will not alter the substance of the disposition, and provided it be approved in this character by the Judge, with a citation of the persons interested.

If the mode, without an act or fault on the part of the assign, becomes entirely impossible, the assignment shall subsist without the charge.

1518 par. 3, 1537, 1530 *et seq.*

ART. 1152. If the testator shall not determine sufficiently the time or the special form in which the mode is to be fulfilled, the Judge may determine the same, conforming in so far as possible to the will of the former, and leaving to the modal assign a benefit amounting to at least one-fifth the value of the thing assigned.

1551 par. 2, 1127.

ART. 1153. If the mode consist of an act that, for the ends the testator had in view, it is indifferent what person executes it, it is transmissible to the heirs of the assign.

ART. 1154. Whenever it shall be necessary to carry out the resolutive clause, a sum commensurate with the purpose shall be delivered to the person in whose favor the mode has been constituted, and the remainder of the value of the thing assigned shall accrue to the inheritance, unless the testator shall have provided otherwise.

The assign upon whom the mode has been imposed shall not enjoy the benefit that may accrue to him from the preceding provision.

CHAPTER 5.

Of Assignments Under a Universal Title.

ART. 1155. The assigns under a universal title, whatever they be called, and even though they be classified in the testament as legatees, are heirs: they represent the person of the testator to succeed him in all his transferable rights and obligations.

The heirs are also bound to assume the testamentary charges, that is, those which are constituted by the testament itself, and which are not imposed upon determined persons.

1008, 1011, 1475, 1411, 1580, 1836, 1227, 1347, 1395 No. 4, 1417, 1162.

ART. 1156. The assign who has been called to the succession, in general terms, which do not designate any quotas, as "Let So and so be my heir," or "I leave my property to So and so," is a universal heir.

But should he participate with heirs of quotas, he shall be understood to be the heir of that quota which, added to those designated in the testament, makes up the unit or whole.

If there be a number of heirs instituted, without a designation of quotas, they shall divide the inheritance, or the quota thereof falling to them, in equal portions among themselves.

ART. 1157. If other assignments having been made, the residue of the property is disposed of, and all the assignments, excepting that of the residue, are under a singular title, the one receiving the residue is the universal heir: if any of the other assignments are of quotas, the one receiving the residue is the heir of the quota remaining to make up the unit.

1008.

ART. 1158. Should there be no universal heirs, but only heirs to quotas, and those designated in the testament do not together make up the whole unit, the intestate heirs are understood to be called as heirs to the residue.

If there should be no assignment in the testament under a universal title, the intestate heirs are universal heirs.

1037, 1009 par. 2.

ART. 1159. If the quotas designated in the testament complete or exceed the unit, in such case the universal heir shall be considered as instituted to a quota the numerator of which is the unit, and the denominator the total number of heirs; unless he shall have been instituted the heir to the *residue*, in which case he shall have nothing.

ART. 1160. The quotas having been reduced to a common denominator including those computed according to the preceding article, the inheritance shall be represented by the sum of the numerators, and the net quota of each heir by his respective numerator.

ART. 1161. The provisions of this title are understood as without prejudice to the action for amendment (*acción de reforma*) which the law grants the forced heirs and the surviving spouse.

1240, 1274 *et seq.*

CHAPTER 6.

Of Assignments Under a Singular Title.

ART. 1162. The assigns under a singular title, whatever name be applied to them, and even though they be called heirs in the testament, are legatees: they do not represent the testator; they have no other rights or charges but those expressly conferred or imposed upon them.

This, nevertheless, shall be understood as without prejudice to their liability subsidiary to that of the heirs, and that which may accrue to them in the event of an action for amendment.

1008, 1011, 1199, 1200, 1419, 1420, 1155.

ART. 1163. The legacy of things which at the time of the execution of the testament may be of public property and common use, or may form part of a building, so that they cannot be removed without injuring it, is not valid, unless the cause shall disappear before the legacy is deferred.

1013 par. 2, 672, 658.

ART. 1164. The testator may order that a specific thing belonging to another be acquired for the purpose of giving it to some person or to employ it in some charitable purpose; and if the assign upon whom this obligation is imposed cannot fulfill it, because the owner of the specific thing refuses to sell it, or demands an excessive price therefor, the said assign shall be obliged only to give in money the just value of the specific thing.

And if the specific thing belonging to another which has been bequeathed shall have been acquired previously by the legatee or for the charitable purpose, its price shall be due only in so far as the acquisition shall have been under an onerous title and at an equitable price.

1423.

ART. 1165. The legacy of a specific thing which is not the testator's, nor of the assign upon whom the obligation of giving it has been imposed, is null; unless it shall appear in the testament that the testator knew that the thing was not his nor said assign's; or unless the thing belonging to another be bequeathed to a legitimate descendant or ascendant of the testator, or to his spouse; as in such cases the procedure prescribed in the first paragraph of the preceding article shall be observed.

ART. 1166. If the thing bequeathed belonging to another passed, before the death of the testator, into the ownership of the latter or of the assign upon whom the obligation to give it had been imposed, the legacy shall be due.

ART. 1167. The assign obliged to furnish the legacy of a thing belonging to another, which he acquires after the death of the testator, shall owe it to the legatee; who, nevertheless, cannot demand it, unless he return what he received therefor, according to article 1164.

ART. 1168. If the testator had in the thing bequeathed only a portion, quota or right, it shall be presumed that he desired to bequeath only such portion, quota or right.

The same applies to what an assign is obliged to give, in which he has only a portion. quota or right.

66, 752, 1799.

ART. 1169. If when a specific thing is bequeathed, the place where it is kept is designated, and it should not be found there, but elsewhere, the specific thing shall be due: if not found anywhere, a specific thing of the same kind of fair quality shall be due, but only to the persons designated in article 1165.

ART. 1170. The legacy of a fungible thing, the amount of which is not determined in some manner, is not valid.

If the fungible thing be bequeathed, stating the place where it is to be found, the amount found there at the time of the death of the testator shall be due, in the event that the testator shall not have determined the amount; or as much as the testator shall have determined, and not more. If the amount found should be less than the amount designated, only the amount existing shall be due: and if no amount of said fungible thing is found, nothing shall be due.

This, nevertheless, shall be understood with the following limitations:

1. A legacy of a fungible thing the amount of which is determined by the testator in favor of the persons designated in article 1165, shall always be valid.

2. It shall make no difference that the thing bequeathed should not be found in the place designated by the testator, when the legacy and the indication of the place do not form an indivisible clause.

Thus, a legacy of "thirty hectoliters of wheat, which are in such a place," shall be valid, even though no wheat should be found in such place; but a legacy of "the thirty hectoliters of wheat, which will be found in such a place," is not valid, except as to the wheat there found, and not exceeding thirty hectoliters.

1124.

ART. 1171. The legacy of a future thing is valid, provided it comes into existence.

ART. 1172. If of many specific things existing in the patrimony of the testator, one is bequeathed, without stating which, a thing of average quantity or value, among those comprised in the legacy, shall be due.

1566.

ART. 1173. Generic legacies which are not limited to what exists in the patrimony of the testator, as a cow, a horse, impose the obligation of giving a thing of average quality or value of the same kind.

1566.

ART. 1174. If one of various things which the testator thought he had, is bequeathed, and he has left one only, that one left shall be due.

If he has not left any, the legacy shall not be valid, except in favor of the persons mentioned in article 1165; who shall be entitled to demand only an average thing of the same kind, even though the testator shall have granted them the right of selection.

But if a thing of a kind whose value has no limit, is bequeathed, such as a house, a plantation, and there is none of the same kind among the property of the testator, nothing shall be due, not even to the persons designated in article 1165.

ART. 1175. If the selection of a thing from among a number is expressly granted to the person obligated, *or to the legatee*,* either the former or the latter may offer or select at their option.

If the testator should entrust the selection to a third person, the latter may select at his will; and should he not fulfill his trust within the time fixed by the testator, or, in the absence thereof, by the Judge, the rule of article 1172 shall apply.

After one selection, no other can be made, except for a cause of deceit or fraud.

1515, 1540 par. 2.

ART. 1176. A specific thing bequeathed is due in the state in which it may have existed at the time of the death of the testator, comprising the utensils necessary for its use, which are present therewith.

716, 833, 1017, 1012, 1128, 1138, 1322, 1395, 1542, 1543.

ART. 1177. If the thing devised be an estate, the lands and the new buildings which the testator may have added thereto after making the testament, shall not be comprised in the devise; and if what has been newly added should form with the rest, at the time of the opening of the succession, a whole which cannot be divided without grave loss, and the additions are worth more than the estate in its original condition, the latter value only shall be due the legatee: should they be worth less, all of it shall be due the legatee, with the charge of paying the value of the additions.

But a devise of a measure of land, as *one thousand square meters*, shall not be increased in any case by the acquisition of the adjoining lands, and if the former cannot be separated from the latter, its value only shall be due.

If a lot be devised, and the testator should subsequently build thereon, the value of the lot only shall be due.

*The Civil Code omits in the first paragraph of this article the words in italics; the article was repealed by article 45 of law 57 of 1887 and substituted by article 29 of the same law, which contains the words which appear here in italics.

ART. 1178. If part of an estate be left, the servitudes which may be necessary for its enjoyment and cultivation shall be understood as bequeathed.

66, 908, 938.

ART. 1179. If a house be devised, with its furniture or with all its contents, there shall not be understood as comprised in the devise the things enumerated in the second paragraph of article 662, but only such as form the household furniture, located therein; and if a country plantation be devised in the same manner, the devise shall not be understood to comprise other things than those which serve for the cultivation and exploitation of the plantation, and which are situated thereon.

In either case none of the other objects contained in the house or on the plantation shall be due, but those which the testator shall expressly designate.

ART. 1180. If a carriage of any kind be bequeathed, the harness and animals which the testator ordinarily used in connection therewith, which may be existing therewith at the time of his death, shall also be considered as bequeathed.

ART. 1181. If a flock or herd be bequeathed, all the animals of which it consists at the time of the death of the testator, and no more, shall be due.

ART. 1182. If different quotas of one and the same thing shall be bequeathed to different persons, the rules of the preceding paragraph shall be observed in its division.*

ART. 1183. A specific thing bequeathed passes to the legatee with its servitudes, rent and other real charges.

ART. 1184. If a thing be bequeathed with an injunction not to alienate it, and the alienation does not compromise any right of a third person, the clause not to alienate shall be considered as not written.

2022, 1931, 2440. 109 of law 153 of 1887.

ART. 1185. Not only corporeal things, but rights and actions may also be bequeathed.

By the act of bequeathing the title of a credit, it shall be understood that the credit is also bequeathed.

The legacy of a credit comprises that of the interest due; but it sub-

* The Colombian legislator took textually this article from the Code of Chile, a Code whose Titles are divided into paragraphs, and not into Chapters, as is this Code. Hence it is that the rules of the preceding "paragraph" do not apply.

Article 45 of law 57 of 1887, expressly repeals the article commented on, which is replaced by art. 30 of said law 57, the purpose of which is to make said correction.

sists only as to that part of the credit or interest which the testator may not have received.

761, 1959. 33 of law 57 of 1887.

ART. 1186. If a thing which was pledged to the testator, is bequeathed to the debtor, the debt is not thereby extinguished, but only the right of pledge; unless it shall clearly appear that the will of the testator was to extinguish the debt.

1713 par. 2.

ART. 1187. If the testator remits a debt in the testament, and afterwards sues the debtor, or accepts the payment offered him, the debtor cannot take advantage of the waiver; but if it should have been paid without the notice or consent of the testator, the legatee may demand what was paid.

2313.

ART. 1188. If a person be released from the payment of what he owes, without the determination of a sum, the release shall cover only the debts existing at the date of the testament.

ART. 1189. What is bequeathed to a creditor shall not be considered as on account of his credit, if it be not expressed, or if it should not clearly appear from the circumstances that it is the intention of the testator to pay the debt with the legacy.

If this should be stated or appear, the debt must be recognized according to the terms acknowledged by the testator, or proof be adduced that the obligation was contracted; and the creditor may, at his option, demand payment according to the terms under which the debtor was bound, or under those stated in the testament.

ART. 1190. If the testator orders paid what he believes he owes and does not owe, the disposition shall be considered as not written.

If by reason of a determined debt, more than the amount thereof is ordered paid, the excess shall not be due, unless the intention of donating it shall be apparent.

1117, 1502, 1510, 1511, 2313.

ART. 1191. The debts confessed in the testament, and of which on the other hand there is not a principle of proof in writing, shall be considered as gratuitous legacies, and shall be subject to the same liabilities and deductions as other legacies of this character.

1058, 1767, 1120, 1795. 91, 92 and 93 of law 153 of 1887.

ART. 1192. If voluntary support be bequeathed without determining the form and amount thereof, it shall be due in the form and to the amount which the testator was accustomed to furnish to the same person; and in the absence of such determination, it shall be governed by the necessities of the legatee, his relations with the testator, and the extent of the patrimony of which the testator has been able to dispose freely.

If the testator should not fix the time of the duration of the contribution of support, it shall be understood that it is to last during the entire life of the legatee.

If an annual pension be bequeathed for the education of the legatee, it shall continue until he attains the age of twenty-one years, and shall cease if he die before said age.

1418 par. 3, 419, 422, 1796 No. 5, par. 2.

ART. 1193. The obligation to pay the legacy ceases with the destruction of the specific thing bequeathed.

The alienation of specific things bequeathed, in whole or in part, by an act *inter vivos*, involves the revocation of the legacy in whole or in part; and the legacy shall not subsist or revive, even though the alienation shall have been null, and even though the specific things bequeathed return to the power of the testator.

A pledge, mortgage or rent charge (*censo*) constituted upon the thing bequeathed, does not extinguish the legacy, but charges it with said pledge, mortgage or rent charge.

If the testator shall substantially alter the movable thing bequeathed, as when he should have a cart made of the wood, or cloth from wool, it shall be understood that he revokes the legacy.

1543, 1561, 1604 par. 2, 1606, 1607, 1729 *et seq.*

CHAPTER 7.

Of Revocable Donations.

ART. 1194. A *revocable donation* is that which the donor may revoke at will.

112, 125, 150, 164, 304, 1243 to 1246, 1258, 1259, 1482 *et seq.*, 1842 *et seq.*, especially 1846 and 1848.

A *donation mortis causa* is the same as a revocable donation; and a *donation inter vivos*, the same as an irrevocable donation.

1056, 1057, 1197 and commentary, 1443 and citations to said article.

ART. 1195. Only such donation shall be valid as a revocable donation which shall have been made with the formalities which the law prescribes for the same, or that to which the law expressly gives this character.

If the donation be made with the formalities required of those *inter vivos*, and the donor in the instrument reserves to himself the power to revoke it, it shall be necessary, in order that it subsist after the death of the donor, that the latter shall have expressly confirmed it in a testamentary act; unless the donation be from one spouse to the other.

Donations which are not embodied in any instrument whatsoever, shall be valid as donations *inter vivos*, in so far as legal; excepting those made between spouses, which may always be revoked.

1056, 1197, 1457, 1458, 1196 last par., 745 par. 2, 1775.

ART. 1196. Revocable donations from persons who cannot make a will or donate *inter vivos*, are null.

Those between persons who cannot receive testamentary assignments or donations *inter vivos* from each other, are likewise null.

Nevertheless, donations between spouses, shall be valid as revocable donations.

1061, 1444, 1445, 1449, 1018 *et seq.*, 1119, 745 par. 2, 1056, 1195, 1795 pars. 2 and 3, 1844, 1852.

ART. 1197. The making of revocable donations shall be governed by the rules of article 1050.*

ART. 1198. By a revocable donation, followed by the tradition of the things donated, the donee acquires the rights and contracts the obligations of a usufructuary.

Nevertheless, he shall not be obliged to give the bond for preservation and restitution required of usufructuaries, unless the donor shall require it.

745, 834.

ART. 1199. Revocable donations under a singular title are anticipated legacies, and are subject to the same rules as legacies.

On the other hand, if the testator shall give during his lifetime the enjoyment of the thing bequeathed to the legatee, the legacy is a revocable donation.

1008, 1011, 1197, 1162, 1242 pars. 2 and 3, 1243, 1419 *et seq.*

* The citation to art. 1050 is incorrect; art. 1056 should have been cited. For this reason this article is repealed by art. 45 of law 57 of 1887, and replaced by art. 31 of the same law, which corrects the error.

ART. 1200. Revocable donations, including legacies, in the case of the preceding paragraph, shall take precedence over legacies the enjoyment of which has not been given to the legatees during the life of the testator, when the property which the latter shall leave at his death is not sufficient to cover them all.

ART. 1201. The revocable donation of all of the property, or of a quota thereof, shall be considered as an institution of heir, which shall be effective only after the death of the donor.

However, the donee of all the property or of a quota thereof may exercise the rights of a usufructuary over the specific things which may have been delivered to him.

1464, 1465, 1466, 1008, 1011.

ART. 1202. Revocable donations lapse by the mere act of the death of the donee before that of the donor.

ART. 1203. Revocable donations are confirmed and give the property of the object donated, by the mere act of the donor dying without having revoked them, and without there having arisen as to the donee any cause of incapacity or unworthiness, sufficient to invalidate an inheritance or legacy; excepting the case of article 1195, par. 2.

1258 par. 2, 1259 par. 2.

ART. 1204. The revocation may be express or implied, in the same manner as the revocation of inheritances or legacies.

1193, 1208 par. 2.

ART. 1205. The provisions of this paragraph, in so far as they concern forced assigns (*asignatarios forzosos*), are subject to the exceptions and modifications which will be stated in the Title *Of forced assignments*.*

CHAPTER 8.

Of the Right of Accretion.†

ART. 1206. If one object should be left to two or more assigns, and the portion of one of them, which on account of his absence is added to the portions of the others, it is said to *accrue* thereto.

1041, 1847, 1222.

* The word *paragraph*, employed at the beginning of this article, is equivalent to *Chapter*. See comment to art. 1182.

† See La. Civil Code, arts. 1022 [1015] to 1028 [1021].

ART. 1207. This accretion shall not take place between the assigns of the different parts or quotas into which the testator may have divided the thing assigned: each part or quota shall in such case be considered as a separate object; and there shall be no right of accretion, except between the co-assigns of the same part or quota.

If an object be left to two or more persons in *equal parts*, the right of accretion shall exist.

1841.

ART. 1208. The right of accretion shall exist whether the co-assigns are called in the same clause or in separate clauses of the same testamentary instrument.

If the call be made in two different instruments, the first call shall be presumed to be revoked in so far as it should not be common with the subsequent call.

66, 1273 par. 2.

ART. 1209. The joint co-assigns shall be considered as a single person in order to participate with other co-assigns; and the collective person formed by the former, shall not be considered as absent, unless all of them are absent.

By joint co-assigns shall be understood those who are associated by a copulative expression, as *Peter and John*, or included in a collective denomination, as the sons of Peter.

ART. 1210. A co-assign may preserve his own portion and repudiate that which is deferred to him by accretion; but he cannot repudiate the former and accept the latter.

1126.

ART. 1211. The portion which accrues carries with it all its charges, excepting those which suppose a personal quality or ability on the part of the co-assign who is absent.

1126.

ART. 1212. The right of transmission established by article 1014, excludes the right of accretion.

1222.

ART. 1213. The assigns of a usufruct, of a use, of a habitation or of a periodical pension preserve the right of accretion while they are in the

enjoyment of said usufruct, use habitation or pension; and none of these rights is extinguished until the last co-assign is absent.*

832 par. 2, 865 par. 2.

ART. 1214. The testator may, in any case, prohibit the accretion.

CHAPTER 9.

Of Substitutions.

ART. 1215. A substitution is *simple (vulgar)* or *in trust (fideicomisaria)*.

A *simple* substitution is that where an assign is designated to take the place of another who does not accept, or who, before the assignment is deferred to him, becomes absent through death, or through another cause which extinguishes his eventual right.

An assign shall not be considered as absent when he has accepted, unless the acceptance be invalidated.

ART. 1216. A substitution expressly made to supply any of the cases in which the assign may be absent, shall be understood as made for any of the other cases in which he may be absent; unless the testator shall have willed otherwise.

ART. 1217. The substitution may be of various degrees, as when a substitute is designated for the direct assign, and another for the first substitute.

ART. 1218. One may be substituted for a number and a number for one.

ART. 1219. If three or more assigns are mutually substituted, and one of them is absent, the portion of the latter shall be divided among the others in proportion to the value of their respective assignments.

ART. 1220. The substitute of a substitute who shall be absent, shall be considered as called in the same cases and with the same charges as the latter, without prejudice to what the testator may have provided in this respect.

ART. 1221. If the assign should be the legitimate descendant of the testator, the legitimate descendants of the assign are not thereby considered as substituted for the latter; unless the testator shall have willed otherwise.

ART. 1222. The right of transmission excludes that of substitution, and that of substitution, that of accretion.

1212, 1014.

ART. 1223. Substitution in trust is that in which a *cestui que trust* is

* The Code of Chile says: "The co-assigns of a usufruct. . . ."

called, who in the event of a condition becomes the absolute owner of that which another person held as fiduciary property.

Substitution in trust is governed by the provisions of the Title *Of Fiduciary Property*.

ART. 1224. If one or more substitutes be designated to provide for the absence of the *cestui que trust*, these substitutions shall be considered as simple, and shall be subject to the provisions of the preceding articles.

Neither the *cestui que trust* in the first place, nor any substitute called to occupy his place, shall transmit their expectations if they should become absent.

1012, 1019.

ART. 1225. The substitution shall not be presumed to be in trust, unless the tenor of the disposition shall manifestly exclude a simple substitution.

TITLE V.

Of Forced Assignments.

ART. 1226. Forced assignments are those which the testator is obliged to make, and which are supplied when he does not make them, even to the prejudice of the express testamentary dispositions.

Forced assignments are:

1. The support due by law to certain persons.
2. The conjugal portion.
3. The *légitimes*.
4. The betterments of a quarter (*cuarta de mejoras*) in the succession of the legitimate descendants.

411, 1230, 1239, 1242 par. 3. 34 to 37 of law 153 of 1887.

CHAPTER I.

Of Assignments for Support which are Due Certain Persons.

ART. 1227. The support which the deceased according to law owed certain persons, charges the estate, unless the testator shall have imposed this obligation upon one or more participants in the succession.

1016 No. 4, 1155 par. 2.

ART. 1228. The assigns of support are not obliged to make any return whatsoever by reason of the debts or charges upon the patrimony of the deceased; but future support which appears out of proportion to the extent of the net patrimony cannot be reduced.

1418 par. 2, 419, 1229 par. 2.

ART. 1229. Assignments for support to persons who under the law are not entitled to support, shall be imputed to that portion of property of which the deceased could freely dispose.

And if the support bequeathed to forced assigns should be larger than is proper under the circumstances, the excess shall be imputed to the aforesaid property.

CHAPTER 2.

Of the Conjugal Portion.

ART. 1230. The *conjugal portion* is that part of the patrimony of a deceased person which the law assigns to the surviving spouse who does not possess what is necessary for his adequate support.

ART. 1231. Even a divorced spouse shall be entitled to the conjugal portion, unless he gave rise to the divorce through his own fault.

166.

ART. 1232. This right shall be understood to exist at the time of the death of the other spouse, and shall not lapse either in whole or in part by the acquisition of property subsequently by the surviving spouse.

1012. 34, 35, 37 of law 153 of 1887.

ART. 1233. The surviving spouse who at the time of the death of the other spouse had no right to a conjugal portion, shall not acquire it afterwards by the fact of his becoming poor.

ART. 1234. If the surviving spouse should have property, but not of as much value as the conjugal portion, he shall be entitled only to the balance, as a conjugal portion.

Therefore, to the conjugal portion shall be imputed all that the surviving spouse may be entitled to under any other title in the succession of the deceased, including his half of the acquets and gains, if he does not renounce it.

1831, 1837.

ART. 1235. The surviving spouse may, at his option, retain what he possesses or is due him, renouncing the conjugal portion, or demand the conjugal portion upon abandoning his other property and rights.

ART. 1236. The conjugal portion is one-quarter of the property of the deceased person, in all the orders of succession, excepting in that of legitimate descendants.

If there be such descendants, the widower or widow shall be counted among the children, and shall receive as a conjugal portion the rigorous *légitime* of a child.

1016 No. 5, 1242, 1249, 1278. 86 of law 153 of 1887.

ART. 1237. If the surviving spouse is to receive in the succession of the deceased, under the title of a donation, inheritance or legacy, more than he is entitled to as a conjugal portion, the surplus shall be imputed to that part of the property of which the deceased could freely dispose.

ART. 1238. The spouse to whom shall have fallen under a universal title on account of his conjugal portion some part in the succession of the deceased, shall be liable in proportion to this part, as the heirs are in their respective quotas.

If one-half the acquets and gains should be imputed to said portion, the special liability to which it is subject, according to the provisions of the *Title Of the Conjugal Partnership*, shall subsist.

In the rest which the widower or widow may receive, as⁷ a conjugal portion, he or she shall have only the subsidiary liability of legatees.

1155, 1833, 1411, 1162 par. 2.

CHAPTER 3.

*Of Légitimes and Betterments.**

ART. 1239. *Légitime* is that portion of the property of a deceased person which the law awards to certain persons called *legitimaries* or *forced legitimarios*.

Legitimaries are, consequently, heirs.

1011.

ART. 1240. The following are forced heirs:

1. The legitimate children personally, or represented by their legitimate posterity.
2. The legitimate ascendants.
3. The natural children personally, or represented by their legitimate posterity.
4. The natural parents.

1040, 1041, 1043, 282. 34, 36, 85, 86 of law 153 of 1887.

ART. 1241. The forced heirs participate and are excluded and represented according to the order and rules governing intestate succession.

1040 *et seq.*, 85, 86, 87, of law 153 of 1887.

ART. 1242. One-half the property, after the deductions and additions indicated in article 1016, and those stated below, shall be divided *per capita* or *per stirpes* among the respective forced heirs, according to the rules governing intestate succession; what falls to each one in this division, will be his *rigorous légitime*.

Should there be no legitimate descendants entitled to succeed, the remaining half is the portion of the property of which the deceased could freely dispose.

If there be such descendants, the estate, after the said deductions and additions, shall be divided into four parts: two of them, that is to say one-half the estate, for the rigorous *légitimes*; another quarter, for the betterments with which the deceased may have wished to favor one or more of his legitimate descendants, whether forced heirs or not; and another quarter disposable of at his will.

See citations to preceding article and 1277 par. 2, 1370, 1432, 282.

*See La. Civil Code, arts. 1493 [1480] *et seq.*

ART. 1243. In order to compute the quarters referred to in the preceding article, all revocable and irrevocable donations made by way of *légitimes* or betterments, according to the value the things donated may have had at the time of their delivery, shall be added in an imaginary manner to the net estate, as also the deductions which, in accordance with article 1234, may be made from the conjugal portion.

The quarters above referred to apply to this imaginary estate.

1016 last par., 1199, 1200 *et seq.*, 1244 to 1247.

ART. 1244. If one who had at the time forced heirs, should have made donations *inter vivos* to other persons, and the value of all of them together should exceed one-fourth of the sum formed by this value and exceed the imaginary estate, the forced heirs shall have the right to have this excess added also in an imaginary manner to the estate, for the computation of their *légitimes* and betterments.

1443, 1199, 1200.

ART. 1245. If the excess be so great that it not only absorbs that part of the property of which the deceased could freely dispose, but also affects the rigorous *légitimes*, or the quarter betterments, the forced heirs shall be entitled to recover the excess donated, proceeding against the donees in the inverse order of the dates of the donations, that is, beginning with the most recent.

The insolvency of a donee will not be a charge upon the others.

1482.

ART. 1246. The remainder only shall be considered as a donation, after having deducted the pecuniary charge to which the assignment may be subject.

Nor shall moderate gifts be taken into consideration, which are authorized by custom, on certain days and in certain cases, nor gifts of handiwork of little value.

13 of law 153 of 1887.

ART. 1247. If the sum of that which has been given by reason of a *légitime* does not reach one-half the imaginary estate, the deficit shall be taken from the property, with preference to any other application.

ART. 1248. If a forced heir does not take all or part of his *légitime*, on account of incapacity, unworthiness or disinherison, or because he has repudiated it, and has no descendants having the right of representation, said whole or part shall be added to the half set aside for the forced heirs, and shall contribute to form the rigorous *légitimes* of the others, and the conjugal portion, in the case of article 1236 par. 2.

The deductions which may be made according to article 1234 from the conjugal portion, in the preceding case, shall return in the same manner to the half for the forced heirs.

1044 par. 2, 1041.

ART. 1249. That portion of the property of which the testator could dispose as betterments, or without restriction, which he has not disposed of, or if he has, the disposition has remained without effect, accrues to the rigorous *légitimes*.

When the rigorous *légitimes* are thus increased, they are called *effective légitimes*.

This accretion does not benefit the surviving spouse in the case of article 1236, par. 2.

1052.

ART. 1250. The rigorous *légitime* is not susceptible of any condition, term, mode or charge whatsoever.

Upon the rest which may have been left or is left the forced heirs, excepting under the form of donations *inter vivos*, the testator may impose the charges he desires, without prejudice to the provisions of article 1253.

1028 par. 3, 1262 par. 2.

ART. 1251. If what has been given or is given by reason of *légitimes*, exceeds one-half the imaginary estate, it shall be imputed to the quarter of betterments, without prejudice to being divided into equal parts among the forced heirs; but to the exclusion of the surviving spouse, in the case of article 1236, par. 2.

1243, 1242.

ART. 1252. If the betterments (including the excess referred to in the preceding article in a proper case) should exceed a fourth part of the imaginary estate, this excess shall be imputed to the remaining fourth part, with preference to any object of free disposition, to which the deceased may have destined it.

1243, 1242.

ART. 1253. The donor or testator may make the distribution he wishes among his legitimate descendants of the betterment quarter; he may, therefore, assign to one or more of his legitimate descendants the entire quarter, to the exclusion of the others.

The charges imposed upon the participants in the betterment quarter, shall always be in favor of one or more of the other legitimate descendants.

1242.

ART. 1254. If there should be no manner of completing the *légitimes* and betterments, calculated in accordance with the preceding articles, both shall be reduced *pro rata*.

ART. 1255. He who owes a *légitime* may, in any case, fix the specific things in which its payment is to be made; but he cannot delegate this power to any person, nor appraise the value of said specific things.

1375.

ART. 1256. All legacies, all donations, whether revocable or irrevocable, made to a forced heir who had at the time the quality of such, shall be imputed to his *légitime*, unless it shall appear from the testament, or in the respective instrument or subsequent authentic act, that the legacy or donation was a betterment.

Nevertheless, the expense of the education of a descendant shall not be taken into consideration in the computation of the *légitimes*, nor of the betterment quarter, nor of the disposable quarter, even though they have been incurred as so imputable.

Nor shall there be considered in such imputations the presents made to a descendant on the occasion of his marriage, nor other customary presents.

1800. 13 of law 153 of 1887.

ART. 1257. The accumulation of what has been given irrevocably by reason of *légitimes* or betterments, for the computation prescribed by articles 1242 *et seq.*, does not benefit the hereditary creditors nor the assigns who are so under any title other than a *légitime* or betterment.

ART. 1258. If a revocable or irrevocable donation be made, under the title of a *légitime*, to a person who is not at the time a forced heir of the donor, and the donee does not subsequently acquire the condition of a forced heir, the donation shall be resolved.

The same shall be observed if the donation shall have been made as a *légitime* to one who was at the time a forced heir, but subsequently ceased to be such, through incapacity, unworthiness, disinherison or repudiation, or through the appearance of another forced heir having a better right.

If the donee, being a legitimate descendant, is lacking on account of

any of these causes, the donations which are imputable to his *légitime* shall be imputed to that of his legitimate descendants.

1203.

ART. 1259. If a revocable or irrevocable donation be made as a betterment, to a person who was believed to be a legitimate descendant of the donor, and was not so in fact, the donation shall be resolved.

The same shall take place if the donee, who is a legitimate descendant, has become absent through incapacity, unworthiness, disinheritance, or repudiation.

1512, 1203.

ART. 1260. Such donations or testamentary assignments as a deceased person may have made to another shall not be imputed to the *légitime* of a person, excepting in the case of the third paragraph of article 1258.

ART. 1261. The disbursements made for the payment of the debts of a forced heir who is a legitimate descendant, shall be imputed to his *légitime*, but only in so far as they were applied to the payment of said debts.

If the deceased shall have expressly declared, by an act *inter vivos* or in a testament, his desire that said expenses be not imputed to the *légitime*, they shall in such case be considered a betterment.

If the deceased, in the case of the preceding paragraph, should have bequeathed to the said forced heir as a betterment, any quota of the inheritance or a sum of money, they shall be imputed to said quota or sum; without prejudice to the excess being applied as a betterment or in the manner the deceased may have ordered.

1414.

ART. 1262. If the deceased shall have promised in a public instrument *inter vivos*, to a legitimate descendant, who was a forced heir at the time, not to donate or assign by testament any part of the quarter composing the betterments, and should subsequently break his promise, said legitimate descendant shall have the right to force the assigns of said quarter to reimburse him the amount he would have received through the fulfillment of the promise in proportion to the benefit accruing to them through its violation.

Any other stipulations upon the future succession, between a forced heir and he who owes him the *légitime*, shall be null and of no value.

1612 par. 1, 1250, 1283 par. 3, 1520, 1526.

ART. 1263. The fruits of the things donated revocably or irrevocably, as a *légitime* or betterment, during the life of the donor, belong to the

donee from the time of their delivery, and do not figure in the hereditary estate; and if the things donated shall not have been delivered to the donee, the fruits shall not belong to him until after the death of the donor, unless the latter shall have made an irrevocable donation in an authentic manner, not only of the ownership but also of the usufruct of the things donated.

716, 718, 1176.

ART. 1264. If the donee of specific things, which are to be imputed to his *légitime* or betterment, should definitely receive a sum not under the value of said specific things, he shall be entitled to retain them and demand the balance, and cannot force the other assigns to change the things, or give him their value in money.

And if he should definitely receive a sum lower than the value of the said specific things, and should be obliged to pay a balance, he may, at his will, make this payment in money, or restore one or more of said things, and demand the corresponding pecuniary compensation for such amount as the actual value of the things which he returns exceeds the balance which he owes.

1243, 1256.

CHAPTER 4.

Of Disinherison.

ART. 1265. *Disinherison* is a testamentary disposition ordering that a forced heir be deprived of all or of a part of his *légitime*.

A disinherison which does not conform to the rules stated in this Title, shall not be valid.

34 par. 2, and 35 of law 153 of 1887.

ART. 1266. A descendant can be disinherited for the following causes only:

1. For having committed a grave injury against the testator in his person, honor or property, or the person, honor or property of his spouse, or of any of his legitimate ascendants or descendants.
2. For not having assisted him when in a state of insanity or destitution, when able to do so.
3. For having used force or fraud to prevent him from making a will.
4. For having married without the consent of an ascendant, or without that of the court in its place, if obliged to secure it.
5. For having committed a crime to which any of the penalties mentioned in No. 4 of article 315, may have been applied, or for having abandoned one's self to vices or exercised infamous trades; unless it be proved

that the testator did not interest himself in the education of the person disinherited.

Ascendants may be disinherited for any of the first three causes.

1485, 1685 No. 1, 1025, 124, 1268.

ART. 1267. None of the causes of disinheriton mentioned in the preceding article shall avail, if it be not specifically expressed in the testament, and if, in addition it shall not have been proved judicially during the life of the testator; or if the persons interested in the disinheriton, should not prove it after his death.

Nevertheless, such proof shall not be necessary, when the person disinherited does not demand his *légitime* within four years next after the opening of the succession; or within four years from the date upon which his incapacity to administer ceased, if at the time of the opening of the succession, he shall have been incapable.

1274.

ART. 1268. The effects of the disinheriton, if the disinheritor does not expressly limit them, extend not only to the *légitimes*, but to all assignments *mortis causa*, and to all the donations which the testator may have made the disinherited.

But they do not extend to necessary support, excepting in cases of atrocious injury (outrage).

125 par. 2, 414 par. 3, 1036, 414 pars. 3 and 4.

ART. 1269. The disinheriton may be revoked, as other testamentary dispositions, and the revocation may be total or partial; but it shall not be considered as impliedly revoked if there has been a reconciliation, nor can the person disinherited be permitted to prove that there was an intention to revoke it.

TITLE VI.

Of the Revocation and Amendment of a Testament.

CHAPTER I.

Of the Revocation of a Testament.

ART. 1270. A testament that has been validly executed cannot be invalidated except by the revocation of the testator.

Nevertheless, privileged testaments lapse without the necessity of revocation, in the cases prescribed by law.

The revocation may be total or partial.

1093, 1101 par. 2, 1109, 1110.

ART. 1271. A solemn testament may be expressly revoked in whole or in part, by a solemn or privileged testament.

But the revocation made by a privileged testament shall lapse with the testament containing it, and the former one shall subsist.

ART. 1272. If a testament which revokes an earlier testament is in its turn revoked, the first testament does not revive by such revocation, unless the testator should provide otherwise.

ART. 1273. A testament is not revoked impliedly in all its parts by the existence of one or more subsequent ones.

Subsequent testaments which do not expressly revoke the preceding ones, shall leave such provisions of the latter as are not incompatible or contrary to the later ones, in force.

72, 1208. 2 and 3 of law 153 of 1887.

CHAPTER 2.

Of the Amendment of Testaments.

ART. 1274. Forced heirs who have not been left by the testator what is due them under the law, shall have a right to the amendment of the testament in their favor, and may institute proceedings for amendment (they or the persons to whom they may have transferred their rights), within four years from the day on which they received notice of the testament and of their quality of forced heirs.

If the forced heir, at the time of the opening of the succession, did not have the administration of his property, the action for amendment will

not prescribe with regard to him before the expiration of four years from the date upon which he shall assume said administration.

1240, 1372 par. 2, 1267 par. 2.

ART. 1275. In general, what is due by law to the forced heirs, and what they have the right to demand through an action for amendment, is their rigorous *légitime* or their effective *légitime*, in a proper case.

1242, 1249 par. 2, 1262, 1283 last par.

A forced heir who has been unjustly disinherited shall, in addition, have the right that the donations *inter vivos* comprised in the disinheritance subsist.

1242, 1249 par. 2.

ART. 1276. The fact of a forced heir having been passed in silence, must be construed as an institution of heir in his *légitime*.

He shall retain, in addition, the revocable donations which the testator may not have revoked.

ART. 1277. The forced heirs of the same order and degree shall contribute to the formation or completion of what is due the plaintiff by reason of his *légitime*.

If he who has legitimate descendants shall dispose of any part of the quarter comprising the betterments, in favor of other persons, the forced heirs shall also have the right to have the testament amended in this respect and that said part be adjudicated to them.

1242 par. 3.

ART. 1278. The surviving spouse shall have a right of action for amendment in order to make up her conjugal portion, according to the preceding rules.

1236.

TITLE VII.

Of the Opening of the Succession, and of its Acceptance, Repudiation and Inventory.

CHAPTER I.

General Rules.

ART. 1279. From the moment a succession is opened, all persons having an interest therein, or who are presumed to have such interest, may demand that the movables and papers of the succession be kept under lock and key and sealed until a formal inventory of the property and of the hereditary effects is made.

The domestic furniture of quotidian use shall not be kept under lock and key and sealed; but a list thereof shall be made.

The care and the affixing of seals must be made under the direction of the Judge, with the legal formalities.

1012, 471, 472, 1310, 1312, 1341, 1822.

ART. 1280. If the property of the succession should be situated in different places, the Judge before whom the succession may have been opened shall, at the instance of any of the heirs or creditors, address orders or letters rogatory to the judges of the places where such property may be situated, in order that they may provide for their care and sealing, until the corresponding inventory is made, in a proper case.

ART. 1281. The cost of the care and the affixing of seals, and of the inventories, shall be a charge upon all the property composing the succession, unless they affect only one portion thereof, in which case they shall be a charge upon such part only.

1016 No. 1.

ART. 1282. Every assign may freely accept or repudiate.

Persons not having the free administration of their property are excepted, who cannot accept or repudiate except through or with the consent of their legal representatives.

They are forbidden to accept by themselves, even under the benefit of inventory.

A married woman, however, may accept or repudiate with judicial authorization, in the absence of that of the husband, the provisions of the last paragraph of article 191 being observed.

182, 183, 486, 1293, 1307.

ART. 1283. No assignment can be accepted until after it shall have been deferred.

But after the death of the person whose succession is involved, any assignment may be repudiated, even though it be conditional and the condition be pending.

The permission given by a forced heir to the person who owes the *légitime* to testate without considering it, shall be considered an untimely repudiation and shall have no value whatsoever.

1013 par. 2, 1470 par. 2, 1520, 1250, 1262 par. 2, 1526.

ART. 1284. A conditional acceptance or repudiation cannot be made, nor one to or from a certain day.

ART. 1285. One part or quota of the assignment cannot be accepted, and the remainder repudiated.

But if the assignment made to a person is transmitted to his heirs, according to article 1014, each of the latter may accept or repudiate his quota.

ART. 1286. One assignment may be accepted and another repudiated; but an assignment subject to a charge cannot be repudiated and the others accepted, unless it be deferred separately, by right of accretion or of transmission or of simple substitution or substitution in trust, or unless the assign shall have been granted the power to repudiate it separately.

135 of law 153 of 1887.

ART. 1287. If an assign sell, donate, or transfer, in any manner, to another person, the object which may have been deferred to him, or the right to succeed thereto, it shall be understood thereby that he accepts it.

66, 1298, 1299, 1301, 1309.

ART. 1288. An heir who has removed effects belonging to a succession, loses the power to repudiate the inheritance, and notwithstanding his repudiation he shall remain the heir; but he shall have no part whatsoever in the objects removed.

A legatee who has removed objects belonging to a succession, loses any rights which as a legatee he may have had in said objects, and not having the ownership thereof, he shall be obliged to return twice as much.

Both shall, furthermore, be criminally subject to the penalties affixed to the crime.

1313, 1301, 1357, 1824.

ART. 1289. Every assign shall be obliged, upon a demand by any person interested, to declare whether he accepts or repudiates; and he shall make this statement within forty days next after the demand. In the event of the absence of the assign, or if the property be situated at a distance, or for any other serious reason, the Judge may extend this period; but never for more than one year.

During this period every assign shall have the right to examine the object assigned; he may request the taking of such judicial measures for preservation as are proper; and he shall not be under the obligation to pay any hereditary or testamentary debt; but the executor or curator of a vacant inheritance shall, in a proper case, be under such obligation.

An heir, during this term, may also inspect the accounts and papers of the succession.

If an absent assign should not enter an appearance, in person or through his legal representative, in due time, a curator *ad bona* to represent him and to accept for him under the benefit of inventory shall be appointed.

578, 1538, 1383 last par.

ART. 1290. An assign who is tardy in declaring whether he accepts or repudiates, shall be understood to repudiate.

66, 1292, 1298, 1299.

ART. 1291. An acceptance, after having been made with legal requisites cannot be rescinded, unless it shall have been obtained by force or fraud, and in the case of lesion beyond moiety (*lesión grave*), by virtue of testamentary dispositions unknown at the time of its acceptance.

This rule applies even to the assigns who do not have the free administration of their property.

By a lesion beyond moiety shall be understood that which diminishes the total value of the assignment by more than one-half.

1838 par. 2, 1947, 1508, 1294.

ART. 1292. The repudiation is not presumed of right excepting in the cases prescribed by law.

66.

ART. 1293. Those who do not have the free administration of their property cannot repudiate an assignment under a universal title, nor an assignment of real or personal property valued at more than one thousand pesos, without judicial authorization, after an investigation.

The husband cannot repudiate an assignment deferred to his wife

without her consent, if she be capable of giving it, or without the authority of the court, in place thereof.

If the repudiation be made in any other manner, it shall be null, and the wife shall be entitled to be indemnified by the husband for all damage; any right of action against third persons being reserved.

486, 489, 182, 1282.

ART. 1294. No person shall be entitled to have his repudiation rescinded, unless the person himself, or his legitimate representative, shall have been induced by force or fraud to repudiate.

1838 par. 2, 1508, 1291.

ART. 1295. The creditors of a person who repudiates to the prejudice of their rights, may seek authorization from the court to accept for the debtor. In such case the repudiation is rescinded only in favor of the creditors, and to the extent of their credits; and it subsists as to the remainder.

1668, 862 par. 2, 1441, 1451 par. 2, 2491, 1397.

ART. 1296. The effects of the acceptance or repudiation of an inheritance retroact to the moment that the latter shall have been deferred.

The same applies to legacies of specific things.

1013 par. 2.

CHAPTER 2.

Special Rules Relating to Inheritances.

ART. 1297. If fifteen days after the opening of the succession the inheritance or a quota thereof shall not have been accepted, and if there be no executor to whom the testator shall have conferred the seizin of the property, who shall have accepted the trust, the Judge, at the instance of the surviving spouse, or of any of the relatives or dependents of the deceased, or of another person interested therein, or *ex proprio motu*, shall declare the inheritance vacant; this declaration shall be inserted in the official newspaper of the Territory, if there be any; and by announcements which shall be posted in three of the most frequented places of the district in which the greater part of the hereditary property is situated, and in that of the last domicile of the deceased; and thereupon a curator to the vacant inheritance shall be appointed.

If there be two or more heirs, and one of them shall accept, he shall have the administration of all the hereditary property *pro indiviso*, after a formal inventory; and upon his co-heirs successively accepting, and

subscribing the inventory, they shall take part in the administration. Until they have accepted all the powers of the heir or heirs who administer shall be the same as those of curators to the vacant inheritance; but they shall not be obliged to give bond, unless there should be fear that under their administration the property may be endangered.*

1012, 1328, 1353, 569, 575, 465.

ART. 1298. The acceptance of an inheritance may be express or implied. It is express when the title of heir is taken; and it is implied, when the heir performs an act which necessarily supposes his intention of accepting, and which he would not have had the right to perform but in his quality of heir.

66, 1287, 1290, 1506 par. 2, 1300, 1301.

ART. 1299. It shall be understood that a person assumes the title of heir, when he does so in a public or private instrument, obligating himself as such heir, or in a judicial proceeding.

66, 1287.

ART. 1300. Purely conservative acts, those of inspection and urgent provisional administration, are not acts which by themselves suppose the acceptance.

ART. 1301. The alienation of any hereditary effects, even for an object of urgent administration, is an act of heirship, if it has not been authorized by the Judge, on the petition of the heir, the latter stating that it is not his intention to obligate himself as such.

1288, 66.

ART. 1302. He who performs an act of heirship, without a previous formal inventory, succeeds to all the transmissible obligations of the deceased, in proportion to his hereditary quota, even though they impose upon him a charge exceeding the value of the property which he inherits.

A formal inventory having first been made, he shall enjoy the benefit of inventory.

1298, 1692, 2507, 1304.

ART. 1303. He who at the instance of a hereditary or testamentary creditor shall have been judicially declared the heir, or adjudged as

*This paragraph states incorrectly "Until they have accepted *all* the powers of the heir" The Code of Chile says: "Until all have accepted, the powers of the heir"

such, shall be understood to be such with regard to the other creditors, without the necessity of new proceedings.

The same rule shall apply to the judicial declaration of having accepted, purely and simply, or under the benefit of inventory.

CHAPTER 3.

*Of the Benefit of Inventory.**

ART. 1304. The benefit of inventory consists in not making the heirs who accept liable for the hereditary or testamentary obligations, beyond the aggregate value of the property which they have inherited.

1302, 1314 *et seq.*, 1411, 1435, 1682, 1728, 2507.

ART. 1305. If of a number of co-heirs, some wish to accept under the benefit of inventory and others not, all of them shall be obliged to accept under the benefit of inventory.

ART. 1306. The testator cannot prohibit an heir from accepting under the benefit of inventory.

ART. 1307. The inheritances of the fisc and of all public corporations and establishments, must necessarily be accepted under the benefit of inventory.

Inheritances falling to persons who can accept or repudiate only through the direction or with the authority of others, shall be accepted in the same manner.

Should the provisions of this article not be observed, the natural or juristic persons represented shall not be liable for the debts and charges of the succession beyond the value of the estate at the time of the suit, or the amount that is proved to have been actually expended for the benefit thereof.

191, 486, 487, 182, 211, 1282, 1815 pars. 2 and 3.

ART. 1308. Fiduciary heirs are obliged to accept under the benefit of inventory.

813, 814, 834, 835, 837.

ART. 1309. Every heir retains the power to accept under the benefit of inventory, as long as he has not performed an act of heirship.

1287, 1298, 1299, 1301, 1302.

ART. 1310. In the preparation of the inventory the prescriptions for those of tutors and curators, contained in articles 472 *et seq.*, and the

*See La. Civil Code, arts. 1032 [1025] *et seq.*

provisions of the Code of Procedure regarding formal inventories, shall be observed.

1822.

ART. 1311. If the deceased shall have had an interest in a partnership, and shall have stipulated in a clause of the articles of partnership that the partnership was to continue with his heirs after his death, this shall not be a reason for omitting the partnership property from the inventory, without prejudice to the partners continuing their administration until the partnership expires, and without any bond being required of them.

2129.

ART. 1312. The executor, the curator to the vacant succession, the presumptive testamentary or intestate heirs, the surviving spouse, the legatees, the commercial partners, the *cestuis que trustent* and every hereditary creditor who presents the title of his credit, shall have a right to be present at the inventory. The foregoing persons may be represented by others who produce a public or private instrument by which this duty is entrusted to them, when they are not represented by their husbands, tutors or curators, or any other legal representatives.

All of these persons shall have a right to object to the inventory in all that appears to them to be incorrect.

471, 472.

ART. 1313. An heir who, in the preparation of the inventory, shall, in bad faith, fail to mention any part of the property, no matter how small, or shall suppose debts which do not exist, shall not enjoy the benefit of inventory.

1824, 1288, 476, 477.

ART. 1314. He who accepts under the benefit of inventory, becomes responsible, not only for the value of the property he actually receives at that time, but also for that of the property which subsequently accrues to the inheritance involved in the inventory.

The list and appraisal of this property shall be added to the existing inventory, with the formalities observed in the preparation of the latter.

ART. 1315. He shall become likewise liable for all the credits if he has actually collected them; without prejudice to his accounting, at the proper time, for his discharge, for the credits uncollected, placing at the disposition of the persons interested the unpaid actions and titles.

497, 2183, 66, 1604 par. 3.

ART. 1316. The debts and credits of the beneficiary heir are not confounded with the debts and credits of the succession.

1304, 1414, 1728.

ART. 1317. The beneficiary heir shall be liable to the extent of a light fault, for the preservation of the specific or certain things which may be due.

The safety of the other property of the succession runs at his risk, and he is liable only for the value at which it was appraised.

1604 par. 1.

ART. 1318. The beneficiary heir may at any time exonerate himself from his obligations, by abandoning to the creditors the property of the succession that he is obliged to deliver in kind, and the balance remaining from the other property, and obtaining from them or from the Judge the approval of the account of his administration, which he is obliged to submit to them.

ART. 1319. The property of the succession or the portion thereof which fell to the beneficiary heir, having been exhausted in the payment of the debts and charges, the Judge must, on the petition of the beneficiary heir, cite the hereditary and testamentary creditors who have not been satisfied, by edicts, in order that they may receive from said heir an exact account, with vouchers in so far as possible, of all the disbursements he may have made; and after the approval of the account by them, or, in the event of disagreement, by the Judge, the beneficiary heir shall be declared relieved from any further liability.

504, 2181.

ART. 1320. The beneficiary heir who shall plead to a suit that the hereditary property or the portion thereof that has fallen to him, has already been exhausted in the payment of debts and charges, must prove it by presenting to the plaintiffs an exact account, with vouchers, in so far as possible, of all the disbursements he may have made.

1757.

CHAPTER 4.

Of the Petition of Inheritance and Other Actions of the Heir.

ART. 1321. He who shall establish his right to an inheritance occupied by another person in the capacity of heir, shall have a right of action to secure the adjudication to him of the inheritance and the restitution of the hereditary things, corporeal as well as incorporeal; and even those

of which the deceased had the mere seizin, as depositary, bailee (in *commodatum* or pledge), lessee, etc., and which have not legally returned to their owners.

665, 948.

ART. 1322. Said action extends not only to the things which belonged to the deceased at the time of his death, but also to the increase which the inheritance may subsequently have acquired.

1176, 716, 964.

ART. 1323. The rules governing an action of revendication shall be applied to the restitution of fruits and the allowance of improvements in the petition of inheritance.

961 *et seq.*

ART. 1324. He who shall have occupied the inheritance in good faith shall be responsible for the alienation or deteriorations of the hereditary things, only in so far as they may have made him richer; but if he shall have occupied it in bad faith, he shall be liable for the entire value of the alienations or deteriorations.

ART. 1325. The heir may also bring an action of revendication against the hereditary things subject to revendication which may have passed into the hands of third persons and shall not have been prescribed by them.

If he prefer to make use of this action, he shall nevertheless retain his right to recover from the person who occupied in bad faith what he may not have been able to secure from the third possessors, so that he shall be entirely indemnified; and he shall have a similar right against the person who occupied the inheritance in good faith, in so far as the latter may be bound in accordance with the preceding article.

ART. 1326. The right of petition of inheritance expires in three years. But the putative heir, in the case of the last paragraph of article 766, may oppose a prescription of ten years against this action, computed as for the acquisition of ownership.

1032, 2533 subdivision 1.

TITLE VIII.

Of Testamentary Executors.

ART. 1327. *Testamentary executors* are those upon whom the testator imposes the charge of executing his dispositions.

ART. 1328. If the testator shall not have appointed an executor, or the one appointed is absent, the trust of carrying out the dispositions of the testator belongs to the heirs.

1297 par. 2.

ART. 1329. A minor, even though he be qualified as to age, cannot be an executor.

Nor the persons designated in article 586.

34 par. 2, 339, 588.

ART. 1330. A married woman cannot discharge an executorship without the authority of her husband or of the court, in place thereof.

By whichever of these two modes she discharges it, she binds her own property only.

ART. 1331. A widow who is the executrix of her deceased husband, ceases to be such upon re-marriage.

599.

ART. 1332. Incapacity occurring during the executorship, puts an end thereto.

601.

ART. 1333. The Judge, at the instance of any of the persons interested in the succession, shall fix a reasonable term for the appearance of the executor to enter upon the discharge of his duties, or to excuse himself therefrom, and the Judge may, in a necessary case, extend this term once only.

If the executor should delay in entering an appearance, his appointment shall lapse.

ART. 1334. An executor appointed may freely decline this duty.

Should he decline it, without proving serious inconvenience, he shall become unworthy to succeed the testator, in accordance with article 1028, par 2.

1384.

ART. 1335. The executorship having been expressly or impliedly accepted, the executor is obliged to discharge it, excepting in the cases in which it is licit for a mandatary to exonerate himself from the agency.

Resignation from the office, with legitimate cause, deprives him only of a proportional part of the allowance which may have been made him in remuneration for his services.

2150 par. 3.

ART. 1336. An executorship is not transmissible to the heirs of the executor.

ART. 1337. An executorship cannot be delegated, unless the testator shall have expressly granted the power to delegate it.

The executor, however, may appoint agents who shall act under his orders; but he shall be responsible for their acts.

2161.

ART. 1338. Should there be a number of executors, they shall all be liable *in solido*, unless the testator shall have relieved them of the solidarity, or the testator himself or the Judge shall have divided their powers, and each of them confines himself to those incumbent upon him.

1568 par. 2, 508.

ART. 1339. The Judge may divide the powers, to the advantage of the administration, at the request of any of the executors, or of any of the persons interested in the succession.

508.

ART. 1340. Should there be two or more executors with common powers, all of them shall act jointly, in the same manner as prescribed for tutors in article 502.

The Judge shall settle any disagreements which may arise among them.

The testator may authorize them to act separately, but this authorization alone shall not be construed as relieving them of their solidary liability.

ART. 1341. It shall be the duty of the executor to see to the security of the property; cause the money, furniture and papers to be kept under lock and key and sealed, until a formal inventory shall have been made, and see that this inventory is made with the citation of the heirs and other persons interested in the succession; unless all the heirs being capable of administering their property, they shall unanimously determine that a formal inventory be not made.

471, 1822.

ART. 1342. Every executor shall be obliged to give notice of the opening of the succession by notices published in the press, in newspapers circulating in the Territory, and by means of posters which shall be affixed in three of the most public places where the succession is opened, and he shall take care that the creditors are cited by edicts which shall be published in the same manner.

2196 par. 2.

ART. 1343. Whether the testator has directed the executor to pay his debts or not, the latter shall be obliged to require that in the partition of the property a sufficient amount thereof or sum be set aside to cover the known debts.

1393.

ART. 1344. The omission of the formalities prescribed in the two preceding articles, shall render the executor liable for any damage which such omission may cause the creditors.

The same obligations and liability shall fall upon the heirs present who have the free administration of their property, or upon the respective tutors or curators, and the husband of the wife who inherits, if she be not separate in property.

1393, 1412.

ART. 1345. The executor charged with the payment of hereditary debts, shall do so with the intervention of the heirs present or the curator of the vacant inheritance, in a proper case.

ART. 1346. Even though the testator shall have entrusted the payment of the debts to the executor, the creditors shall always have a right of action against the heirs, if the executor should delay in paying them.

ART. 1347. He shall pay the legacies which may not have been imposed upon a determined heir or legatee; for which purpose he shall demand of the heirs or of the curator of the vacant inheritance, the money that may be necessary, and the specific movable or immovable property of which the legacies consist, if the testator should not have left him the seizin of the money or of the things.

The heirs, nevertheless, may make the payment of the said legacies themselves, and turn over to the executor the respective receipts; unless the legacy consists of a work or act specially entrusted to the executor, and left to his judgment.

1155.

ART. 1348. If there be legacies for objects of public charity, he shall

give notice thereof, with the insertion of the respective testamentary clauses, to the representative, syndic or agent of the establishment to which such legacies may have been or are to be destined, or to the municipal representative, if the case be that of article 1115, or if the legacies be for purposes of public utility; and he shall likewise inform them of the neglect of the heirs or legatees bound therefor, or of the curator of the vacant inheritance, in a proper case, in order that they may take the proper action to secure the execution of said legacies.

ART. 1349. If the payment of specific things bequeathed is not to be made at once, and if there be good reason to fear that they may be lost or deteriorate through the neglect of the persons bound to give them, the executor whose duty it is to execute the legacies, may require security of them.

ART. 1350. With the consent of the heirs present, he shall proceed to the sale of the movables and subsidiarily of the immovables, if there should not be sufficient money for the payment of the debts or of the legacies; and the heirs may object to the sale upon delivering to the executor the money that he may require for the purpose.

484, 501.

ART. 1351. The provisions of articles 484 and 501 apply to executors.

ART. 1352. The executor shall not be able to appear in court as such, except to defend the validity of the testament, or when it should be necessary to do so to carry out the testamentary dispositions incumbent upon him; and in every case he shall do so with the intervention of the heirs present or of the curator of the vacant inheritance.

1289 par. 2, 1353 par. 2.

ART. 1353. The testator may grant the executor the seizin of any part of the property or of all of it.

The executor shall have in the latter case, the same powers and obligations as the curator of a vacant inheritance; but he shall be obliged to furnish bond in the case of the following article only.

Notwithstanding this seizin, the provisions of the preceding articles shall apply.

1637, 575 *et seq.*

ART. 1354. The heirs, legatees or *cestuis que trustent*, in the event of just fear as to the safety of the property of which the executor is seized, and to which he may respectively have an actual or eventual right, may demand that the proper securities be required of him.

820.

ART. 1355. The testator cannot increase the powers of the executor, nor relieve him of his obligations, as both are defined in this Title.

1380, 1366.

ART. 1356. An executor is responsible to a light fault in the discharge of his duties.

63 par. 3.

ART. 1357. He shall be removed for a grave fault or fraud, on the petition of the heirs or of the curator of the vacant inheritance, and in the case of fraud he shall become unworthy to participate in any manner whatsoever in the succession, and, in addition to indemnifying the persons interested for any damage, he shall return all that he may have received as compensation.

63 par. 2, 1028 par. 2, 1386.

ART. 1358. The executor is forbidden to carry out any disposition of the testator, in so far as contrary to law, under the penalty of nullity, and of being considered guilty of fraud.

ART. 1359. The compensation of the executor shall be that which the testator may have assigned him.

If the testator shall not have fixed any sum, it shall be the duty of the Judge to fix it, taking into consideration the estate, and the more or less laborious character of the duties.

ART. 1360. The executorship shall continue for the certain and determined time which the testator may have fixed in advance.

ART. 1361. If the testator should not have fixed any time for the duration of the executorship, it shall continue for one year from the date upon which the executor shall have begun to discharge his duties.

1826 par. 2.

ART. 1362. The Judge may extend the period fixed by the testator or by the law, if the executor should encounter serious difficulties in the execution of his trust.

ART. 1363. The term fixed by the testator or the law, or extended by the Judge, shall be considered without prejudice to the partition of the property and its distribution among the participants.

1389 par. 2, 1826 par. 2.

ART. 1364. The heirs may demand the termination of the executorship as soon as the executor shall have terminated his duties, even though the period fixed by the testator or the law, or extended by the Judge, for the discharge thereof, shall not have expired.

ART. 1365. The existence of legacies or *fidei comissa*, the day or condition of which should still be pending, shall not be a cause either for the extension of the period or for the termination of the executorship, unless the testator shall have expressly given the executor the seizin of the respective specific things, or of that part of the property destined to their execution; in which case the executorship shall be limited to this sole seizin.

What has been said is extended to the debts the payment of which may have been entrusted to the executor, and whose due date, condition or liquidation should be pending; and it shall be understood without prejudice to the rights conferred upon the heirs by the preceding articles.

ART. 1366. The executor, upon the termination of his charge, shall render an account of his administration, together with vouchers.

The testator cannot relieve him of this obligation.

504, 1319, 1373, 2181, 1355.

ART. 1367. The executor, after the accounts shall have been examined by the respective persons interested, and after the deduction of the legitimate expenses, shall pay or receive the balance which may result against him or in his favor, according to the provisions for tutors or curators in similar cases.

513.

TITLE IX.

Of Fiduciary Executors.

ART. 1368. The testator may entrust secret and confidential commissions to the heir, the executor or any other person for the application of an amount of property of which he can freely dispose, to one or more licit objects.

The person entrusted with the execution thereof is called a *fiduciary executor*.

1058.

ART. 1369. The commissions which the testator shall give secretly and confidentially, and in which a portion of his property is to be employed, shall be subject to the following rules:

1. The person of the fiduciary executor must be designated in the testament.

2. The fiduciary executor shall have the qualifications necessary to be an executor and legatee of the testator; but the quality of being a secular ecclesiastic shall not be an obstacle thereto, provided he be not comprised in the case of article 1022.

3. The specific things or sum which is to be delivered to him for the fulfillment of his commission, must be stated in the testament.

In the absence of any of these requisites, the disposition shall not be valid.

1058, 1329, 1018 *et seq.*

ART. 1370. Not more than one-half of that portion of the property disposable at the will of the testator, can be destined to these secret commissions.

1242 pars. 2 and 3.

ART. 1371. The fiduciary executor must swear before the Judge that the purpose of the commission is not to cause any part of the property of the testator to pass to an incapable person, or to invest it in an illicit object.

He shall, at the same time, swear to execute his commission faithfully and legally, conforming to the will of the testator.

The oath must be taken before the delivery or advance of the specific things or money set aside for the commission.

If the fiduciary executor should refuse to take the oath required of him, the commission shall by such act fall.

1029.

ART. 1372. The fiduciary executor may be required, at the instance of a general executor, or of an heir, or of the curator of the vacant inheritance, and with some just cause, to place in deposit or secure one-quarter of that which may be delivered to him by reason of the commission, to answer with this sum for the action for amendment or the hereditary debts in the cases prescribed by law.

This sum may be increased, if the Judge should deem it necessary for the security of the persons interested.

Upon the expiration of four years after the opening of the succession, the part remaining shall be returned to the fiduciary executor, or the bond shall be cancelled.

1267 par. 2, 1274.

ART. 1373. The fiduciary executor shall not be obliged in any case, to reveal the object of the secret commission, nor to give an account of his administration.

2181 par. 3.

TITLE X.

Of the Partition of the Property.

See art. 37 of law 153 of 1887.

ART. 1374. None of the co-assigns of a universal or singular thing shall be obliged to remain in the indivision; the partition of the object assigned may always be demanded, provided the co-assigns shall not have agreed otherwise.

A stipulation to hold a thing *pro indiviso* cannot exceed five years, but upon the expiration of this term, the agreement may be renewed.

The preceding provisions do not apply to lakes of private ownership, nor to rights of servitude, nor to the things which the law requires be kept undivided, such as fiduciary property.

812, 900, 794.

ART. 1375. If the deceased shall have made the partition by an act *inter vivos* or by a testament, it shall be observed, in so far as not contrary to the rights of others.

1255.

ART. 1376. If any of the co-assigns should be such under a suspensive condition, he shall not have the right to demand the partition during the pendency of the condition. But the other co-assigns may proceed thereto, upon fully securing the conditional assign what may be due him, upon fulfillment of the condition.

If the object assigned be a *fidei commissum*, the provisions of the Title *Of Fiduciary Property*, shall be observed.

1128.

ART. 1377. If a co-assign shall sell or cede his quota to another person, the latter shall have the same right as the vendor or transferrer to demand the partition and participate therein.

ART. 1378. If one of a number of co-assigns should die after the assignment shall have been deferred to him, any of the heirs of the latter may request the partition; but they shall form one single person therein, and may act jointly only, or through a common attorney.

1583 No. 4, par. 3, 949.

ART. 1379. Tutors and curators, and, in general, all those who administer the property of others, by provision of law, cannot proceed to the partition of the inheritances or of the real property in which their wards may have an interest, without judicial authorization.

But the husband shall not require this authorization to institute proceedings for the partition of the property in which his wife is interested; the consent of his wife shall be sufficient, if she should be of age, and not incapable of giving it, or that of the court, in substitution thereof.

485, 1383 par. 2.

ART. 1380. The executor or co-assign of the thing whose partition is in question, cannot be the partitioner, except in the cases expressly excepted.

ART. 1381. The appointment of a partitioner which the deceased may have made by a public instrument *inter vivos* or by testament, shall be valid, even though the person appointed be of those disqualified by the preceding article.

1758, 1760.

ART. 1382. If all of the co-assigns should have the free disposition of their property, and should attend the act, they may make the partition themselves, or appoint a partitioner by common agreement; and in such case the disqualifications mentioned in the aforesaid article shall not apply.

Should they not agree on the appointment, the Judge, on the petition of any of them, shall appoint such partitioner as he may desire, provided that it be not a person proposed by the parties, nor the executor or a co-assign.

ART. 1383. If any of the co-assigns should not have the free disposition of his property, the appointment of a partitioner which shall not have been made by the Judge, must be approved by the latter.

From this provision is excepted a married woman, whose property is administered by the husband; in such cases the consent of the wife shall be sufficient, or that of the court, in place thereof.

The curator of the property of an absentee, appointed in accordance with the provisions of article 1289, last paragraph, shall represent him in the partition, and shall administer such property as may be adjudicated to him therein, according to the rules governing the curatorship *ad bona*.

1379 par. 2, 575.

ART. 1384. The partitioner is not obliged to accept this charge against

his will; but if he shall have been appointed in the testament, and does not accept the charge, the provisions regarding executors in similar cases shall apply.

1028 pars. 2 and 3, 1334, 1335.

ART. 1385. The partitioner who accepts the charge must make a statement to that effect, and shall take oath to discharge it faithfully and within the shortest period possible.

ART. 1386. The responsibility of a partitioner extends to a slight fault, and in the case of prevarication, declared by a Judge of competent jurisdiction, in addition to being subject to the indemnity for damages and the legal penalties corresponding to the crime, he shall become unworthy, in accordance with the provisions regarding executors of last wills contained in article 1357.

63 par. 3.

ART. 1387. Before beginning the partition, the ordinary court shall decide the controversies as to rights in the testate or intestate succession, disinheritance, incapacity or unworthiness of the assigns.

ART. 1388. Questions as to the ownership of the objects in which a person alleges an exclusive right, and which, consequently, should not be included in the divisible estate, shall be decided by the ordinary courts, and the partition shall not be retarded thereby. If decided in favor of the divisible estate, the subsequent proceedings shall be in accordance with the provisions of article 1406.

Nevertheless, if a considerable portion of the divisible estate be involved, the partition may be suspended until they are decided; if the Judge, on the petition of the assigns entitled to more than one-half of the divisible estate, should so decree.

ART. 1389. The law grants the partitioner a term of one year from the date of his acceptance of the charge in which to effect the partition.

The testator cannot extend this period.

The co-assigns may extend or restrict it as may appear to them advisable, even against the will of the testator.

1363.

ART. 1390. The common costs of the partition shall be borne by the persons interested therein, *pro rata*.

* ART. 1391. The partitioner shall conform in the adjudication of the property, to the rules contained in this Title; unless the co-assigns should legally and unanimously decide otherwise.

ART. 1392. The value of the appraisal by experts shall be the basis upon which the partitioner shall proceed in the adjudication of the

specific things; unless the co-assigns shall legitimately and unanimously have agreed upon another, or that the things be sold at auction, in the cases prescribed by law.

ART. 1393. The partitioner, even in the case of article 1375, and even though not called upon to do so by the executor or the heirs, shall set aside the sum or amount mentioned in article 1343, and the omission of this duty shall render him liable for any damage with regard to the creditors.

1343, 1344.

ART. 1394. The partitioner shall *liquidate* what is due each of the co-assigns, and shall proceed to *distribute* the hereditary effects, observing the following rules:

1. Among the co-assigns of a specific thing which does not admit of a division, or the division of which would reduce its value, the one offering most therefor shall have the better right, the value given by the experts appointed by the persons interested being taken as the basis of the offer or bid; any of the co-assigns shall have the right to request the admission of outside bidders, and the price shall be divided among all the co-assigns *pro rata*.

2. Should no one offer more than the appraised value or the conventional value mentioned in article 1392, and if two or more co-assigns should be competing as to the adjudication of a thing, the preference shall be given to a forced heir over one who is not.

3. The portions of one or more tenements which may be adjudicated to the same person, shall, if possible, be continuous, unless the person to whom the adjudication may be made shall consent to receive separate portions, or the continuity shall entail greater prejudice to the other persons interested than the separation would to the person to whom adjudicated.

4. An endeavor shall be made to secure the same continuity between a tenement adjudicated to one assign and another estate owned by the same assign.

5. In the division of tenements, the servitudes necessary for its convenient administration and enjoyment shall be established.

6. If two or more persons should be the co-assigns of a tenement, the partitioner may, with the legitimate consent of the persons interested, separate the usufruct, habitation or use from the ownership, in order to give them on account of the assignment.

7. In the partition of an inheritance or of the residue thereof, after the adjudication of the specific things mentioned in the preceding numbers, the greatest possible equality must be observed, awarding to each one of the co-assigns things of the same nature and quality as are awarded the others, or forming lots of the estate to be partitioned.

8. In the formation of the lots an endeavor shall be made to secure not only equivalence, but also similarity in all of them; but care shall be taken not to separate or divide objects which do not admit of easy division or the separation of which would be prejudicial; unless the persons interested should unanimously and legitimately agree thereto.

9. Each of the persons interested may object to the manner of composing the lots.

10. If the provisions of articles 1379 and 1383 are complied with, judicial approval shall not be necessary to carry out the provisions of any of the preceding numbers, even when some or all of the co-heirs be minors, or other persons who do not have the free administration of their property.

905, 908.

ART. 1395. The fruits accruing after the death of the testator, and during the indivision, shall be divided in the following manner:

1. The assigns of specific things shall be entitled to their fruits and accessions from the moment the succession is opened; unless the assignment shall have been from a day certain, or under a suspensive condition, as in such cases the fruits shall not be due but from said day or from the time of the fulfillment of the condition; unless the testator shall have expressly provided otherwise.

2. The legatees of sums or generic things shall not be entitled to any fruits, but from the moment that the person obliged to furnish said sums or things shall have been in default; and this payment of fruits shall be made at the cost of the heir or legatee in default.

3. The heirs shall be entitled to all the fruits and accessions of the undivided hereditary estate, in proportion to their quotas; deducting therefrom, however, the fruits and accessions belonging to the assigns of specific things.

4. If there be no person directly charged with giving the legacy, the deduction referred to in the preceding paragraph shall be made from the fruits and accessions of the entire estate; but if this charge shall have been imposed by the testator upon one of his assigns, the latter only shall suffer the deduction.

716, 1013, 1176, 1012, 1138, 1128, 1542, 1543, 1608, 2328, 1155
par. 2.

ART. 1396. The fruits hanging at the time of the adjudication of the specific things to the assigns of quotas, sums or generic things, shall be considered as part of the respective species and shall be taken into consideration for the appraisal of the value of the latter.

714 *et seq.*

ART. 1397. If any of the heirs should desire to assume a larger quota of the debts than his pro rata portion, under any condition which the other heirs accept, he may do so.

The hereditary or testamentary creditors shall not be obliged to agree to this arrangement of the heirs for the purpose of bringing their suits.

862 par. 2, 1295, 1415, 1416, 1430 par. 2, 1583 No. 4, 2475, 2484.

ART. 1398. If the patrimony of the deceased should be confounded with property belonging to other persons by reason of private property or the acquets and gains of the spouse, articles of partnership, prior undivided successions, or for any other cause whatsoever, the separation of the patrimonies shall first be made, dividing the common species according to the preceding rules.

ART. 1399. Whenever in the partition of the entire estate or of a portion thereof, absentees who have not appointed agents, or persons under tutorship or curatorship, or juristic persons, have an interest, it shall be necessary that it be submitted on termination for the approval of the court.

488.

ART. 1400. The partition having been made, the particular titles to the objects which may have fallen to them shall be delivered to the participants.

The titles to any object which may have suffered division shall belong to the person designated for the purpose by the testator, or in the absence of such designation, to the person to whom the larger portion may have fallen, with the charge of exhibiting them in favor of the other participants and to permit them to make use thereof, when requested to do so.

In cases of equality, the matter shall be decided by lot.

757 No. 2.

ART. 1401. Every assign shall be considered to have succeeded the deceased immediately and exclusively, in all the effects which may have fallen to him, and as never having had any part whatsoever in the other effects of the succession.

Consequently, if any of the co-assigns shall have alienated a thing which is adjudicated in the partition to another of them, proceedings may be had as in the case of the sale of a thing belonging to another.

1799, 1868, 2442, 779, 1871.

ART. 1402. A participant who shall be molested in the possession of the object which may have fallen to him in the partition, or who shall have suffered eviction therefrom, shall denounce it to the other partici-

pants in order that they may assist in causing the molestation to cease, and shall have the right to warranty of eviction.

This right of action shall prescribe in four years, counted from the date of the eviction.

1913.

ART. 1403. This action shall not lie:

1. If the eviction or molestation be due to a cause arising after the partition.
2. If the right of warranty should have been expressly renounced.
3. If the participant suffered the molestation or eviction through his own fault.

1895, 1898, 1909.

ART. 1404. The payment of the warranty shall be divided among the participants in proportion to their quotas.

The portion of the insolvent is a charge upon all the others in proportion to their quotas, including the one who is to be indemnified.

2329, 2115 par. 2, 1422.

ART. 1405. Partitions are annulled or rescinded in the same manner and according to the same rules as contracts.

The rescission by reason of lesion is granted to him who has been damaged in more than one-half of his quota.

1546, 1947.

ART. 1406. The involuntary omission of some objects shall not be a cause for the rescission of the partition. That in which they shall have been omitted shall be continued later, and they shall be divided among the participants in accordance with their respective rights.

1388.

ART. 1407. The other participants may stop the rescissory action brought by one of them, by offering and securing to him the balance of his portion in cash.

ART. 1408. An action for annulment or rescission cannot be brought by the participant who shall have alienated his portion in whole or in part, unless there shall have been error, force or fraud in the partition, from which damage may result to him.

1508 *et seq.*

ART. 1409. An action for annulment or rescission prescribes with regard to the partitions, according to the general rules which fix the duration of rights of action of this character.

1750, 1954.

ART. 1410. A participant who shall not be desirous of or unable to bring an action for annulment or rescission, shall retain the other legal remedies he may have to be indemnified.

TITLE XI.

Of the Payment of Hereditary and Testamentary Debts.

ART. 1411. The hereditary debts are divided among the heirs, in proportion to their quotas.

Thus, the heir of one-third is obliged to pay only one-third of the hereditary debts.

But the beneficiary heir is not obliged to pay any part of the hereditary debts beyond the value of what he inherits.

What is said is without prejudice to the provisions of articles 1413 and 1583.

1257, 1580, 1585, 1896, 1008 par. 2, 1155, 1238, 1304, 1016 No. 2, 1343, 1393, 1420.

ART. 1412. The insolvency of one of the heirs is not a charge upon the others; excepting in the cases of article 1344, paragraph 2.

1420, 1583.

ART. 1413. The usufructuary or fiduciary heirs divide the debts with the proprietary or fideicommissary heirs, according to the provisions of articles 1425 and 1429, and the hereditary creditors may bring their actions against them, in accordance with the said articles.

ART. 1414. If one of the heirs should be the creditor or debtor of the deceased, there shall be confounded with his hereditary portion only the quota of this credit or debt falling to him, and he shall have a right of

action against his co-heirs *pro rata*, for the rest of his credit, and shall be obligated to them *pro rata* for the balance of his debt.

1261, 1316.

ART. 1415. If the testator should divide the hereditary debts among the heirs in a manner different from that prescribed in the preceding articles, the hereditary creditors may exercise their rights of action, either in conformity with said articles, or in accordance with the dispositions of the testator, as may appear to them more advantageous. But, in the former case, heirs who sustain a greater charge than that imposed upon them by the testator, shall be entitled to indemnity from their co-heirs.

1430 par. 2, 1397, 1583 No. 4, 2325.

ART. 1416. The rule of the preceding article applies to a case in which by the partition or by agreement of the heirs, the debts are distributed among them in a manner different from that expressed in the said articles.

ART. 1417. The testamentary charges shall not be considered as charges of the heirs in common, excepting when the testator should not have charged them upon one of more of the heirs or legatees particularly.

Those falling to the heirs in common, shall be divided among them as the testator may have disposed, and if he shall have been silent as to the division, they shall be divided in proportion to their quotas, or in the form prescribed by the said articles.

1155 par. 2, 1227, 1430.

ART. 1418. Legacies of periodical pensions are due day by day, from the day upon which they are deferred; but they can be demanded only on the expiration of the respective terms, which shall be presumed to be monthly.

Nevertheless, if the pensions should be for support, each payment may be demanded from the beginning of the respective term, and there shall be no obligation to make restitution of any part, even though the legatee should die before the expiration of the term.

If the legacy of a pension for support should be a continuation of that which the testator paid during his lifetime, it shall continue to be paid as if the testator had not died.

The express will of the testator shall prevail over all these rules.

1013 par. 2, 421, 1228, 1229, 1192, 1127, 1618.

ART. 1419. The legatees are not obliged to contribute to the payment of the *légitimes* or of the hereditary debts, unless the testator shall destine to the legacies a part of the portion of property which the law reserves to

the forced heirs, or when at the time of opening the succession there should not have been sufficient therein to pay the hereditary debts.

The right of action of the hereditary creditors against the legatees is in substitution of that which they have against the heirs.

1242, 1199, 1200, 1162.

ART. 1420. The legatees who may have to contribute to the payment of the *légitimes* or of the hereditary debts, shall do so in proportion to the value of their respective legacies, and the portion of the insolvent legatee shall not be a charge upon the others.

Those whom the testator shall have expressly relieved therefrom, shall not contribute, nevertheless, with the other legatees. But if the contributions of the other legatees having been exhausted, a *légitime* should remain incomplete or a debt unpaid, even the legatees relieved therefrom by the testator, shall be obliged to contribute.

Legacies of pious works or works of public charity, shall be understood as exonerated or relieved by the testator, without the necessity of an express provision, and shall contribute after those expressly relieved therefrom; but legacies which are strictly for support, and which are obligatory upon the testator under the law, shall not contribute until after all the others.

1412, 1583, 1242, 1162, 1199, 1200.

ART. 1421. The legatee who is obliged to pay a legacy shall be obligated only to the extent of the benefit he may derive from the succession; but he must prove the amount by which the charge exceeds the benefit.

1757.

ART. 1422. If various immovables are subject to a mortgage, the mortgage creditor shall have a solidary action upon each of said immovables, without prejudice to the remedy of the heir to whom the immovable may belong, against his co-heirs, for the quota of the debt falling to them.

Even though the creditor should have subrogated the owner of the immovable in his actions against his co-heirs, each of the latter shall be responsible only for that part of the debt falling to him.

But the portion of an insolvent shall be divided among all the heirs in proportion.

1404, 1420 par. 1, 2121, 2325.

ART. 1423. A legatee who by virtue of a mortgage or pledge upon the specific thing bequeathed, shall have paid a hereditary debt with which

the testator did not wish to charge him expressly, is subrogated by the law in the right of action of the creditor against the heirs.

If the mortgage or pledge shall have been accessory to the obligation of another person than the testator himself, the legatee shall have no right of action against the heirs.

1668.

ART. 1424. Legacies with an onerous consideration (*causa*), which can be estimated in money, contribute only after the deduction of the encumbrance, and with the attendance of the following circumstances:

1. That the object shall have been effected.
2. That it could not have been effected without the expenditure of a certain amount of money.

Either circumstance must be established by the legatee, and the amount shown to have been expended only shall be deducted by reason of the charge.

1757.

ART. 1425. If the testator leave the usufruct of a part of his property or of all of it to one person, and the naked ownership to another, the owner and the usufructuary shall be considered as one person for the distribution of the hereditary and testamentary obligations devolving upon the thing subject to the usufruct; and the obligations devolving upon both of them jointly, shall be divided between them according to the following rules:

1. The payment of the debts devolving upon the thing subject to the usufruct, shall be borne by the owner, the usufructuary being under the obligation of paying him the current interest upon the amount paid, during the life of the usufruct.

2. If the owner should not agree to make this payment, the usufructuary may do so, and upon the expiration of the usufruct he shall be entitled to receive from the owner a return of the principal, without any interest whatsoever.

3. If the thing subject to the usufruct be sold to pay a mortgage or pledge placed thereon by the deceased, the provisions of article 1423 shall be applied to the usufructuary.

669, 670, 856, 857, 1429.

ART. 1426. The testamentary charges devolving upon the usufructuary, or upon the owner, shall be satisfied by the one upon whom the testator may impose them, and in the manner prescribed in the testament; without his being entitled to any indemnity or interest for having satisfied them in that manner.

ART. 1427. If on imposing testamentary charges on a thing in usufruct, the testator should not determine whether the owner or the usufructuary shall suffer them, the provisions of article 1425 shall be observed.

But if the charges should consist of periodical pensions, and the testator should not have ordered otherwise, they shall be met by the usufructuary during the entire term of the usufruct, and he shall not be entitled to reimbursement from the owner therefor.

855.

ART. 1428. The usufruct constituted in the partition of an inheritance is subject to the rules of article 1425, if the persons interested should not have agreed otherwise.

ART. 1429. The fiduciary owner and the *cestui que trust* shall in every case be considered as a single person, with regard to the other assigns, for the distribution of the hereditary and testamentary debts and charges, and the division of the debts and charges shall be made between the two in the following manner:

The trustee shall bear such charges, with the understanding that at the proper time he shall be reimbursed by the *cestui que trust* without any interest whatsoever.

If the charges should be periodical, the trustee shall bear them, without being entitled to any reimbursement whatsoever.

855, 1425.

ART. 1430. Testamentary creditors cannot exercise the actions which they derive under the testament, except in accordance with article 1417.

If in the partition of an inheritance the legacies should be distributed among the heirs in a different manner, the legatees may institute their actions, either in accordance with this distribution, or in accordance with article 1417, or in accordance with the agreement of the heirs.

1397, 1415, 1583 No. 4.

ART. 1431. If there should be no meeting of creditors, nor objection on the part of a third person, the hereditary creditors shall be paid as they appear, and after the hereditary creditors shall have been paid, the legacies shall be satisfied.

But when the inheritance shall not appear to be excessively encumbered, the legacies may be paid immediately to such legatees as offer a bond to cover what may devolve upon them in the contribution to the debts.

This bond shall not be demandable when the inheritance is manifestly exempt from charges which might affect the legatees.

ART. 1432. The expenditures necessary for the delivery of the things bequeathed, shall be considered as a part of the legacies themselves.

ART. 1433. Should there not be sufficient in the succession to pay all the legacies, they shall be reduced *pro rata*.

ART. 1434. Titles importing a confession of judgment (*títulos ejecutivos*) against the deceased, shall likewise be valid against the heirs; but the creditors cannot institute executory process or levy execution, until eight days after judicial notice of their titles.

TITLE XII.

Of the Benefit of Separation.

ART. 1435. The hereditary creditors and the testamentary creditors may request that the property of the deceased be not confounded with the property of the heir; and by virtue of this benefit of separation they shall have a right to secure performance of their hereditary or testamentary obligations from the property of the deceased, with preference over the debts of the heir himself.

1304, 1316, 2507.

ART. 1436. In order that the benefit of separation may be obtained it is not necessary that what is owed be immediately demandable; it is sufficient that it be due on a day certain or under a condition.

ART. 1437. The right of each creditor to demand the benefit of separation subsists as long as his credit has not prescribed; but it shall not lie in the two following cases:

1. When the creditor has recognized the heir as the debtor by accepting a note, pledge, mortgage, or security of said heir, or a partial payment of the debt.
2. When the property of the succession has already left the hands of the heir, or has been confounded with the property of the latter, so that it is impossible to identify it.

1476.

ART. 1438. The creditors of the heir shall not have the right to demand the separation of property referred to in the preceding articles, for the benefit of their credits.

ART. 1439. The separation of patrimony having been obtained by any of the creditors of the succession, it shall benefit the other creditors of the same who invoke it, and whose credits have not prescribed, or who are not included in the case of No. 1, of article 1437.

The surplus, if there be any, shall be added to the property of the heir in order to satisfy his own creditors, with whom the creditors of the succession who do not enjoy the benefit shall be joined.

ART. 1440. The hereditary or testamentary creditors who shall have obtained the separation or availed themselves thereof, in accordance with the first paragraph of the preceding article, shall not have a right of action against the property of the heir, until the property to which said benefit gave them a preferred right shall have been exhausted; but even then the other creditors of the heir may oppose this action until the total of their credits is paid them.

ART. 1441. The alienations of property of the deceased, made by the heir, within six months following the opening of the succession, and the purpose of which should not have been the payment of hereditary or testamentary credits, may be rescinded at the instance of any of the hereditary or testamentary creditors enjoying the benefit of separation. The same applies to the constitution of special mortgages.

767, 862 par. 2, 1295, 1451 par. 2, 1750, 2491.

ART. 1442. If there be real property in the succession, the decree granting the benefit of separation shall be recorded upon the register or registers which may be proper in view of the situation of said property, with a statement of the estates to which the benefits extends.

TITLE XIII.

Of Donations Inter Vivos.

ART. 1443. A donation *inter vivos* is an act by which a person transfers, gratuitously and irrevocably, a part of his property to another person, who accepts it.

1244, 1245, 1246, 492, 1712, 2301, 164, 125, 150, 1259, 1258, 1482 to 1489.

ART. 1444. Any person whom the law shall not have declared incapable, is capable of donating *inter vivos*.

1445, 1503, 1504, 1851.

ART. 1445. Those who do not have the free administration of their property are unable to donate; excepting in the cases and with the requisites prescribed by law.

304, 491, 492, 2165, 1844.

ART. 1446. Any person whom the law has not declared incapable, is capable of receiving *inter vivos*.

ART. 1447. A donation *inter vivos* cannot be made to a person who does not exist at the moment of the donation.

If a donation be made under a suspensive condition, it shall also be necessary that the person exist at the time of the fulfillment of the condition, with the exceptions mentioned in paragraphs 3 and 4 of article 1020.*

93.

ART. 1448. The incapacities to receive inheritances and legacies, according to article 1021, extend to donations *inter vivos*.

ART. 1449. A donation made to the curator of the donor is likewise null, if made before the curator shall have filed the accounts of his curatorship, and paid the balance, if there be any, against him.

491.

ART. 1450. A donation *inter vivos* is not presumed excepting in the cases expressly prescribed by law.

1454, 2317, 2373, 1713.

* The citation in the last paragraph to art. 1020 is incorrect, as this article does not contain the 3d and 4th paragraphs mentioned, but only two. Art. 1019 should have been cited, the corresponding one being cited in the Code of Chile

ART. 1451. He who repudiates an inheritance, legacy, or donation, or fails to comply with a condition to which an eventual right is subordinated, does not donate, even though he do so with the object of benefiting a third person.

The creditors, nevertheless, may be authorized by the Judge to substitute themselves for a debtor who does so, to the extent of their credits; and the surplus, if there be any, shall redound to the benefit of the third person.

862 par. 2, 1295, 1441, 2491, 1668.

ART. 1452. There is no donation in a loan for use (*commodatum*) of any object, even though its use and enjoyment is usually given in lease.

Nor is there any in a loan for consumption (*mutuum*) without interest.

But there is a donation in the remission or cession of a right to receive the interest of a principal placed out at interest or as a rent charge (*censo*).

2200, 1712, 492.

ART. 1453. Personal gratuitous services do not constitute a donation, even though they be of a character which are ordinarily paid.

ART. 1454. He who becomes surety or constitutes a pledge or mortgage in favor of a third person, does not make him a donation; nor does the person who exonerates the surety of his obligations, or remits a pledge or mortgage while the debtor is solvent; but he who remits a debt or knowingly pays what he really does not owe, makes a donation.

2317, 1711, 1713.

ART. 1455. There is no donation if, while there is a diminution of the patrimony on one hand, there is no increase on the other; as when a donation is made for an object which consumes the amount of the thing donated, and from which the donee does not derive any appreciable advantage in money.

ART. 1456. There is no donation in failing to interrupt a prescription.

ART. 1457. A donation *inter vivos* of realty of any kind shall not be valid, if not executed by a public instrument, recorded in the proper register of public instruments.

Nor shall the remission of a debt of property of the same kind be valid, without this requisite.

1758, 1760, 1843, 756, 1500, 1857 par. 2.

ART. 1458. A donation *inter vivos* which is not insinuated, shall only be effective to the value of two thousand pesos, and shall be null as to the excess.

By *insinuation* is understood the authorization of the Judge of competent jurisdiction requested by the donor or donee.

The Judge shall authorize the donations in which no legal provision is violated.

1712, 1462, 1463, 1467, 1491, 304, 491, 492, 1844.

ART. 1459. When what is donated is the right to receive a sum periodically, the insinuation shall be necessary, if the total of the amounts to be received in ten years exceeds two thousand pesos.

ART. 1460. A donation subject to a term or under a condition shall not produce any effect, if not embodied in a private or public instrument expressing the condition or term; and there shall be necessary therefor the public instrument and the insinuation and record in the same terms as for present donations.

1760, 1767, 1457, 1458.

ART. 1461. Donations with an onerous consideration (*causa*), as for a person to adopt a career or state, or as a dowry, or by reason of marriage, shall be executed by a public instrument, expressing the consideration; and should this not be done, they shall be considered gratuitous donations.

Donations with an onerous consideration, referred to in the preceding paragraph, shall be subject to insinuation according to the provisions of articles 1458, 1459 and 1460.

1760, 1524.

ART. 1462. Donations in which a pecuniary charge is imposed upon the donee, or one which can be estimated at a specific sum of money, are subject to insinuation only with the deduction of the charge.

ART. 1463. Donations which, with the proper requisites, spouses make to each other in the marriage agreement, do not require insinuation nor any other public instrument except the agreement, whatever be the class or value of the things donated.

1843, 1844.

ART. 1464. Donations under a universal title, whether of all or of a quota of the property, require in addition to the insinuation and the execution of a public instrument, and the record in a proper case, a formal inventory of the property, under the penalty of nullity.

If any part of the property should be omitted in this inventory, it shall be understood that the donor reserves the same, and the donee shall have no right to demand it.

1201, 1008, 1867, 2082.

ART. 1465. He who makes a donation of all of his property, must reserve for himself what is necessary for his congruous maintenance; and if he should omit to do so, he may at any time oblige the donee to transfer to him for this purpose, from the property donated or from his own, under the title of ownership or life usufruct, the amount that may be considered reasonable, in proportion to the amount of the property donated.

2082, 834 par. 3, 1201.

ART. 1466. Donations under a universal title do not extend to the future property of the donor, even though the latter should dispose otherwise.

1008, 1011, 1201, 1867, 2082.

ART. 1467. The provisions of article 1458 include donations in trust (*fideicomisarias*) or with the charge of making restitution to a third person.

ART. 1468. No one can accept except in person, or through a person holding his special power of attorney for the purpose, or a general power for the administration of his property, or through his legal representative.

But any legitimate ascendant or descendant of the donee may accept for him, without a special or general power, provided he be capable of contracting and obligating himself.

The rules given regarding the validity of acceptances and repudiations of inheritances or legacies, apply to donations.

2142, 2158, 1637, 1282 *et seq.*, 1298 *et seq.*, 1451 par. 2, 1307.

ART. 1469. Until the donation *inter vivos* shall have been accepted, and the donor notified of the acceptance, the latter may revoke it at will.

1494.

ART. 1470. Donations, with a charge to make restitution to a third person, become irrevocable through the acceptance of the trustee, in accordance with article 1468.

The *cestui que trust* cannot accept before the moment of the restitution; but he may repudiate before that moment.

1283.

ART. 1471. The donation having been accepted by the trustee, and the donor notified of the acceptance, the two may, by common agreement, make such changes in the *fideicommissum* as they may desire, substitute one *cestui que trust* for another, and even revoke the *fideicommissum* entirely, without the *cestui que trust* having a right to object thereto

In order to alter the donation in these terms, they shall proceed as if an entirely new act were involved.

ART. 1472. The right of transmission, established for a succession *mortis causa*, in article 1015, does not extend to donations *inter vivos*.*

ART. 1473. The rules concerning the interpretation of testamentary assignments, the right of accretion, substitutions, terms, conditions and modes relating thereto, apply to donations *inter vivos*.

In other matters not opposed to the provisions of this Title, the general rules governing contracts shall be observed.

1113, 1847, 1128 par. 3, 1845, 1530 *et seq.*

ART. 1474. The donor of a gratuitous donation enjoys the benefit of competency in the actions which the donee may bring against him, whether to oblige him to fulfill a promise or future donation, or whether suing him for the delivery of the things which have been presently donated to him.

1480, 1684, 1685 No. 5.

ART. 1475. The donee under a universal title shall have, with respect to the creditors of the donor, the same obligations as heirs; but only with regard to the debts prior to the donation, or the future debts which do not exceed a specified sum, determined by the donor in the instrument of donation.

1008, 1155, 1411.

ART. 1476. The donation of all the property or of a quota thereof, or of its naked ownership or usufruct, does not deprive the creditors of the donor of the rights of action they may have against him; unless they accept the donee as the debtor expressly, or in the terms of article 1437, No. 1.

ART. 1477. In a donation under a singular title, the charge may be imposed upon the donee of paying the debts of the donor, provided that a determined sum be stated to which this charge is to extend.

The creditors, nevertheless, shall retain their rights of action against the original debtor, as in the case of the preceding article.

ART. 1478. The liability of the donee with regard to the creditors of the donor, shall in no case extend beyond the value of the things donated at the time of the donation, this value appearing in a formal inventory or in another authentic instrument.

The same extends to the liability of the donee for the other charges which may have been imposed upon him in the donation.

1304, 471 *et seq.*, 1310, 1822.

* The citation should be to article 1014 instead of 1015.

ART. 1479. The donee of a gratuitous donation has no action of warranty, even though the donation shall have begun by a promise.

ART. 1480. Donations with an onerous consideration entitle to no action of warranty for eviction, excepting when the donor shall have given a thing belonging to another, knowingly.

Nevertheless, if pecuniary charges have been imposed upon the donee, or charges which can be estimated in money, he shall always have the right to recover what he may have disbursed in their execution, with the current interest, which does not appear to be set off with the natural and civil fruits of the things donated.

The benefit of competency of the donor ceases in so far as this reimbursement is concerned.

1492, 1909, 1474.

ART. 1481. A donation *inter vivos* is not subject to resolution by the birth of one or more legitimate children to the donor after it was made, unless this resolutive condition shall have been expressed in the public instrument of the donation.

ART. 1482. Donations are subject to rescission in the case of article 1245.

ART. 1483. If the donee should delay executing what may have been imposed upon him in the donation, the donor shall have the right to oblige the donee to execute it, or to have the donation rescinded.

In the latter case, the donee shall be considered a possessor in bad faith with regard to the restitution of the things donated and the fruits, provided that he should have failed to comply with the obligation imposed, without grave cause.

The donee shall be allowed what he may have disbursed up to that time in the discharge of his obligation, and which may benefit the donor.

1608, 1546, 963, 964, *et seq.*, 1545, 1746, 1747.

ART. 1484. The rescissory action, granted by the preceding article, shall terminate four years from the date upon which the donee shall have defaulted in the fulfillment of the obligation imposed.

1750, 1751, 1487.

ART. 1485. A donation *inter vivos* may be revoked for ingratitude.

An act of ingratitude shall be any offensive act on the part of the donee which would make him unworthy to inherit from the donor.

1025, 1266, 1267, 1268, 414 pars. 3 and 4.

ART. 1486. In the restitution which a donee may be obliged to make by reason of ingratitude, he shall be considered as a possessor in bad

faith from the time of the commission of the offensive act which has given rise to the revocation.

ART. 1487. An action for revocation prescribes in four years, counted from the date the donor had knowledge of the offensive act, and is extinguished by his death, unless it shall have been brought judicially during his lifetime, or that the offensive act shall have produced the death of the donor, or taken place thereafter.

In such cases the action for revocation shall be transmitted to the heirs.

1750, 1751, 1484.

ART. 1488. When the donor, by reason of having lost his mind, or through another impediment, is unable to institute the action granted him by article 1485, it may be brought in his name, during his lifetime, and within the period fixed in the preceding article, not only by his guardian, but by any of his legitimate descendants or ascendants, or by his spouse.

ART. 1489. The resolution, rescission or revocation referred to in the preceding articles, shall not give a right of action against third possessors nor for the extinction of mortgages, servitudes or other rights constituted upon the things donated, excepting in the following cases:

1. When in the public instrument embodying the donation (recorded in the proper register, if the class of the things donated should make this necessary), the donee shall have been forbidden to alienate them, or the condition shall have been expressed.

2. When before the alienations or the constitution of the rights referred to, the third persons interested have been notified that the donor or another person in his name intends to institute a resolutory or rescissory action, or for revocation, against the donee.

3. When the things donated were alienated or the said rights constituted, after the institution of the action.

A donor who should not avail himself of this right of action against third persons, may demand of the donee the price of the things alienated, according to the value they may have had at the date of the alienation.

1548, 1521 No. 4.

ART. 1490. By remuneratory donations shall be understood those expressly made in remuneration of specific services, provided that the latter are of a class which it is customary to pay.

If it should not appear in a public or private instrument, as the case may be, that the donation was a remuneratory one, or if the services are not specified in the instrument, the donation shall be considered a gratuitous one.

ART. 1491. Remuneratory donations, in so far as they are equivalent

to the value of the services remunerated, are not subject to rescission or revocation, and must be insinuated in so far as they exceed such value.

ART. 1492. A donee who shall suffer eviction of the thing which may have been donated to him in remuneration, shall have the right to demand payment for the services which the donor intended to remunerate thereby, in so far as it shall not appear that they have been offset by the fruits.

1480, 1909.

ART. 1493. In other particulars, remuneratory donations are subject to the rules of this Title.

BOOK FOURTH.

OF OBLIGATIONS IN GENERAL AND OF CONTRACTS.

TITLE I.

Definitions.

ART. 1494. Obligations arise either from the real convergence of the wills of two or more persons, as in contracts or agreements; from a voluntary act on the part of the person binding himself, as in the acceptance of an inheritance or legacy and in all quasi contracts; from the consequence of an act which has inflicted injury or damage to another person, as in crimes; or by operation of the law, as between parents and the children of a family.

1469, 1664, 2302. 34 of law 57 of 1887.

ART. 1495. A *contract* or *convention* is an act by which one party obligates himself to another to give, to do, or not to do, something. Each party may consist of one or several persons.

ART. 1496. A contract is *unilateral* when one of the parties obligates himself to another who does not contract any obligation; and *bilateral* when the contracting parties mutually obligate themselves.

ART. 1497. A contract is *gratuitous* or of beneficence, when the object is the benefit of one of the parties only, the other suffering the charge; and *onerous* when the object is the benefit of both contracting parties, each obligating himself for the benefit of the other.

ART. 1498. An onerous contract is *commutative*, when each of the parties obligates himself to give or to do something which is considered the equivalent of what the other party is to give or do in consideration thereof; and if the equivalent consists in an uncertain contingency of profit or loss, it is called *aleatory*.

1518 par. 2, 1869, 1969, 2282.

ART. 1499. The contract is *principal* when it subsists by itself, without the necessity of another agreement, and *accessory* when its object is to assure the fulfillment of a principal obligation, in such manner that it cannot subsist without it.

ART. 1500. A contract is *real* when, in order to be perfect, the tradition of the thing to which it refers is necessary; it is *solemn* when it is subject to the observance of certain formalities of a special character, so that without them it would not produce any legal effect; and it is *consensual* when it is perfected by the mere consent.

ART. 1501. In every contract are distinguished the things which are of its essence, of its nature and those purely accidental. Of the *essence* are those things without which it would either produce no effect whatsoever or change the character of the contract; of the *nature* of a contract are those which not being of the essence thereof, are understood to belong to it without the necessity of a special clause; and those things are *accidental* in a contract, which are neither of its essence nor of its nature, and which are added thereto by means of special clauses.

1603. 1621 par. 2.

TITLE II.

Of Acts and Declarations of Will.

ART. 1502. In order that a person may obligate himself to another by an act or declaration of will, it is necessary, 1. That he be legally capable; 2. That he consent in said act or declaration and that his consent is not subject to a vice; 3. That it involve a licit object; 4. That it have a licit consideration (*causa*).

The legal capacity of a person consists in being able to obligate himself alone, and without the ministry or authority of another.

1636, 1740 *et seq.*

ART. 1503. Every person is legally capable, excepting those which the law declares incapable.

ART. 1504. The insane, those who have not attained the age of puberty and the deaf and dumb, who cannot make themselves understood in writing, are absolutely incapable.

Their acts do not produce even natural obligations and they do not admit of security.

Minor adults, who have not obtained qualification as to age; spendthrifts who are under interdiction from administering their property; married women, and juristic persons, are also incapable. But the incapacity of these four classes of persons is not absolute, and their acts may be valid under certain circumstances and under certain relations determined by the laws.

In addition to these incapacities, there are other special ones which consist in the prohibition which the law has imposed upon certain persons to execute certain acts.

1741, 1527, 1689, 1529, 2314, 2384 par. 3, 182, 2368, 633 *et seq.*, 183 par. 2, 192, 261, 264, 290, 294, 301, 491 par. 2, 493, 528, 784, 1747, 1777, 2243, 2262, 1196, 1852. 24 to 27 of law 57 of 1887. 27, 80, 81 of law 153 of 1887.

ART. 1505. What a person performs in the name of another, being empowered by the said person or the law to represent him, produces with regard to the principal the same effects as if he had himself entered into the contract.

741 par. 4, 742, 744, 2154, 2186, 640, 1633, 2142, 2157, 2162, 782.

ART. 1506. Any one may make a stipulation in favor of a third person, even though he have no right to represent him; but said third person only may demand what has been stipulated; and until his express or implied acceptance is given, the contract is revocable at the will of the parties thereto.

Acts which could have been performed only by virtue of the contract. constitute an implied acceptance.

1494, 66, 1298, 1299, 1573 par. 2, 2150, 782.

ART. 1507. Whenever one of the contracting parties should engage that a third person, of whom he is not the legal representative, shall give, do or not do something, said third person shall not contract any obligation, except by virtue of his ratification; and if said party does not ratify, the other contracting party shall have an action for damages against the person who made the promise or engagement.

1593 pars. 2 and 3, 2186.

ART. 1508. The vices to which the consent may be subject are error, intimidation and fraud.

1750.

ART. 1509. An error upon a point of law does not vitiate the consent.

9, 768 par. 4, 2315, 2317.

ART. 1510. An error of fact vitiates the consent if it refers to the kind of act or contract executed or celebrated, as if one of the parties shall understand a loan and the other a donation; or to the identity of the specific thing in question, as if in a sale contract the vendor intends to

sell a certain and determined thing, and the vendee intends to purchase another.

1769, 768 par. 3, 1117, 1190, 1524, 2313, 746, 2480.

ART. 1511. An error of fact likewise vitiates the consent when the substance or essential quality of the object involved in the act or contract is different from what is believed; as if one of the parties supposes that the object is a bar of silver, and it really is a mass of some other similar metal.

An error with regard to any other quality of the thing does not vitiate the consent of the contracting parties, unless that quality is the principal motive for one of them entering into the contract, and such motive was known to the other party.

746, 2480.

ART. 1512. An error as to the person with whom it is intended to enter into a contract, does not vitiate the consent, unless the consideration of this person is the principal cause of the contract.

But in such case the person with whom a contract has been erroneously entered into, shall have the right to be indemnified for the damage he may have incurred in good faith through the nullity of the contract.

746, 140 No. 1, 142, 2241, 2479.

ART. 1513. Force does not vitiate the consent unless it is capable of producing a strong impression upon a person of sound mind, taking into consideration his age, sex and condition. Force of this character is considered any act which imbues a person with a just fear of being himself, his spouse or any of his ascendants or descendants exposed to an irreparable and grave injury.

Reverential fear, that is, the simple fear of displeasing the persons to whom submission and respect is due, is not sufficient to vitiate consent.

2476, 1029 par. 2.

ART. 1514. In order that the force vitiate the consent, it is not necessary that it be exercised by the person benefited thereby; it is sufficient that the force shall have been employed by any person for the purpose of obtaining the consent.

2476.

ART. 1515. Fraud does not vitiate the consent, excepting when it is the work of one of the parties, and when in addition it is clearly evident that without it he would not have entered into the contract.

In other cases, fraud gives rise only to an action for damages against the person or persons who have been guilty thereof, or who have benefited thereby; against the former for the entire value of the damages, and against the latter to the extent of the benefit they may have derived therefrom.

63 pars. 2 and 6, 2476, 418, 983, 2343 par. 2.

ART. 1516. Fraud is presumed only in the cases specially prescribed by law. In other cases it must be proved.

63 pars. 2 and 6, 694 par. 3, 1025 subdivision 5, 1358, 2284, 769.

ART. 1517. Every declaration of will must have for object one or more things, which it is desired to give, do or not do. The mere use of the thing or its seizin cannot be the object of the declaration.

1513 *et seq.*, 1524.

ART. 1518. Not only can things which exist be the object of a declaration of will, but also those which are expected to exist; but it is necessary that either be commercial and that they be determined, at least, with regard to their genus.

The amount may be uncertain, provided that the act or contract fixes rules and contains data which serve to determine it.

If the object be an act, it shall be necessary that it be physically and morally possible. That which is contrary to nature is physically impossible, and that prohibited by the laws or contrary to good morals or public order, is morally impossible.

1151, 1532, 1498, 1864 par. 2.

ART. 1519. There is an illicit object in all that which is contrary to the public law of the Nation. Thus, a promise to submit to a jurisdiction not recognized by the laws thereof, is null on account of the vice of the object.

16.

ART. 1520. The right to succeed *mortis causa* to a living person cannot be the object of a donation or contract, even when the consent of the person himself shall be present.

Agreements between a person who owes a *légitime* and the forced heir, with regard to the same *légitime* or to betterments, are subject to the special rules contained in the Title *Of Forced Assignments*.

1451, 1262 par. 2, 1283.

ART. 1521. There is a licit object in the alienation—

1. Of things which are not in commerce.
2. Of rights or privileges which cannot be transferred to another person.
3. Of things attached by a judicial decree, unless the Judge should authorize it or the creditor consent thereto.
4. Of specific things the ownership of which is in litigation, without the permission of the Judge taking cognizance of the litigation.

1636 No. 2, 1720 par. 2, 1489 No. 3, 1570, 2412, 2439, 2490.

ART. 1522. An agreement not to demand more by reason of an approved account, is not valid with regard to the fraud contained therein, if it shall not have been expressly condoned. The condonation of a future fraud is invalid.

15, 198, 1950, 2181 par. 3, 1366 par. 2.

ART. 1523. There is also an illicit object in every contract prohibited by law.

1865 par. 2, 2235, 2473.

ART. 1524. There can be no obligation without a real and licit cause; but it is not necessary to express it. Mere liberality or beneficence is sufficient cause.

By *cause* (consideration) is understood the motive which induces the act or contract; and by *illicit* cause, that prohibited by the law, or contrary to good morals and public order.

Thus, the promise to give something in payment of a debt which does not exist, lacks a cause; and the promise to give something in compensation for the commission of a crime or an immoral act, has an illicit cause.

1510, 1511, 1517.

ART. 1525. A suit cannot be brought for the recovery of that which may have been given or paid knowingly for an illicit object or cause.

2317.

ART. 1526. The acts or contracts which the law declares to be invalid, shall not cease to be so by reason of the clauses introduced therein renouncing the action for nullity.

6 par. 2, 1777 par. 3, 15, 1950.

TITLE III.

Of Civil Obligations and of those Merely Natural.

ART. 1527. Obligations are civil or merely natural.

Civil obligations are those which give a right to enforce their performance.

Natural obligations are those which do not confer a right to enforce their performance, but which upon fulfillment authorize the retention of what has been given or paid, by reason thereof.

Such are:

1. Those contracted by persons who, although having sufficient judgment and discernment, are, nevertheless, incapable of obligating themselves according to the laws, as a married woman in cases in which she requires the authority of her husband, and minor adults not qualified as to age.

2. Civil obligations extinguished by prescription.

3. Those arising from acts which lack the formalities required by law for them to produce civil effects; as that to pay a legacy, imposed by a testament, which has not been executed in due form.

4. Those which have not been admitted in court, for a lack of evidence.

In order that restitution may not be demanded by virtue of these four classes of obligations, it is necessary that the payment shall have been made voluntarily by one who had the free administration of his property.

1514 par. 3, 111 par. 2, 1747, 2314, 2400 No. 1.

ART. 1528. A judicial decision which does not admit the action brought against a person naturally obligated, does not extinguish the natural obligation.

ART. 1529. The securities, mortgages, pledges and penal clauses constituted in third persons for the security of these obligations, shall be valid.

TITLE IV.

Of Conditional and Modal Obligations.

ART. 1530. A *conditional* obligation is that which depends upon a condition, that is, on a future event, which may or may not occur.

1128 par. 2, 1906.

ART. 1531. The condition is positive or negative.

The *positive* condition consists in something occurring; the *negative*, in something not occurring.

ART. 1532. A positive condition must be physically and morally possible.

One that is contrary to the laws of physical nature, is *physically* impossible; and that which consists in the commission of an act prohibited by the laws, or opposed to good morals or to public order, is *morally* impossible.

Those conceived in unintelligible terms shall also be considered impossible.

1518 par. 3, 1123, 1124, 1147 *et seq.*, 1170, 1537.

ART. 1533. If the condition be negative of a thing physically impossible, the obligation is pure and simple; if it consist in the creditor abstaining from an immoral or prohibited act, it vitiates the disposition.

ART. 1534. A *potestative* condition is that which depends on the will of the creditor or of the debtor; a *casual* one, that which depends on the will of a third person or the result of chance; a *mixed* one, that which depends partly on the will of the creditor and partly on the will of a third person or on the result of chance.

ART. 1535. Obligations contracted under a potestative condition which consists in the mere will of the person who obligates himself, are null.

If the condition consists in a voluntary act by any of the parties, it shall be valid.

1526, 1865 par. 2, 2093 par. 2.

ART. 1536. The condition is called *suspensive* if, until it is performed, it suspends the acquisition of a right; and *resolutory*, when by its performance a right is extinguished.

1148.

ART. 1537. If the suspensive condition is or becomes impossible, it shall be considered as lapsed.

The same rule applies to conditions the sense and mode of fulfillment of which are entirely unintelligible.

And the conditions inductive of illegal or immoral acts.

A resolutive condition which is impossible from its nature, or unintelligible, or inductive of an illegal or immoral act, shall be considered as not written.

1151.

ART. 1538. The rule of the preceding article, first paragraph, applies even to testamentary dispositions.

Thus, when the condition is an act which depends upon the will of the assign and on the will of another person, and is not performed on account of an accident which makes it impossible, or because the other person on whose will it depends cannot or does not wish to perform it, it shall be considered as lapsed, notwithstanding the fact that the assign shall, on his part, have been ready to fulfill it.

Nevertheless, if the person obliged to give the assignment, avails himself of illicit means in order that the condition may not be fulfilled, or that another person, on whose will in part its fulfillment consists, does not co-operate with the former, it shall be considered as performed.

1125, 1130.

ART. 1539. A positive condition shall be considered to have lapsed or a negative condition fulfilled, when it has become certain that the event contemplated therein will not take place, or when the time within which the event should have taken place has expired without it having occurred.

ART. 1540. The condition must be performed in the manner in which the parties have probably understood that it should be, and it shall be presumed that the most reasonable manner of performing it is that understood by the parties.

When, for example, the condition consists in the payment of a sum of money to a person under tutorship or curatorship, the condition shall not be considered as performed, if it be delivered to the said person, and he squanders it.

1618, 494, 1634, 1636.

ART. 1541. Conditions must be fulfilled literally in the manner agreed upon.

ART. 1542. The performance of a conditional obligation cannot be demanded until the condition is entirely fulfilled.

All that may have been paid before the performance of a suspensive condition, may be the subject of a suit for recovery until said condition shall have been performed.

1376, 1128, 1138, 2313 *et seq.*

ART. 1543. If before the fulfillment of the condition the thing promised ceases to exist without the fault of the debtor, the obligation is extinguished; and if through the fault of the debtor, the debtor is bound for the price and the indemnity of damages.

If the thing exists at the time of the fulfillment of the condition, it is due in the state in which it may be, the creditor being benefited by the increase or improvement which the thing may have suffered, without being obliged to give more therefor, and suffering its deterioration or diminution, without any right to a reduction in the price; unless the deterioration or diminution be due to the fault of the debtor; in which case the creditor may demand either that the contract be rescinded, or that the thing be delivered, and in addition to one or the other, he shall be entitled to recovery of damages.

That which destroys the suitability of the thing for the object to which according to its nature or according to the agreement it is destined, shall be understood to destroy the thing.

1193, 1606, 1607, 1876, 1128, 1827, 63 par. 3, 1604, 64, 716, 1828, 1941, 713 *et seq.*

ART. 1544. The resolutive condition having been performed, what may have been received under such condition must be restored, unless the latter shall have been imposed in favor of the creditor exclusively, in which case the latter may, if he desires, renounce it; but he shall be obliged to declare his determination, if the debtor requires it.

ART. 1545. A resolutive condition having been performed, the fruits received in the intermediate time shall not be due, unless the law, the testator, the donor or the contracting parties, according to the various cases, shall have provided otherwise.

963 *et seq.*, 1483, 1746, 1747, 1948 par. 2.

ART. 1546. In bilateral contracts the resolutive condition is involved in the event of the non-performance of the agreement by one of the contracting parties.

But in such case the other contracting party may at will request the resolution or the performance of the contract, with indemnity of damages.

1609, 1845 par. 2, 1846 par. 2, 1878, 2127, 2294, 1483, 1930, 1931, 1936, 1937, 2059 par. 2, 1613 *et seq.*

ART. 1547. If he who owes a movable thing subject to a term, or under a suspensive or resolutory condition, shall alienate it, there shall be no right of revendication against third possessors in good faith.

947, 1933, 1934, 1940, 2321.

ART. 1548. If he who owns an immovable under a condition alienates it, or charges it with a mortgage or servitude, the alienation or charge cannot be resolved, unless the condition shall have been included in the respective recorded title, or in a public instrument.

750, 1489, 1933, 1934, 1940, 1944 par. 2, 1760, 948, 2441.

ART. 1549. The right of the creditor who shall die in the interval between the conditional contract and the performance of the condition, is transmitted to his heirs; and the same occurs with the obligation of the debtor.

This rule does not apply to testamentary assignments, nor to donations *inter vivos*.

The creditor may during such interval request the necessary conservative measures.

1136.

ART. 1550. The provisions of Title IV, of Book III, on conditional or modal testamentary assignments, are applied to agreements in so far as they are not in contravention with the provisions of the preceding articles.

TITLE V.

Of Limited Obligations.

ART. 1551. A term (*plazo*) is the period fixed for the performance of the obligation; it may be express or implied. It is implied, when it is indispensable for the performance.

The Judge cannot, except in the special cases fixed by law, fix a term for the performance of an obligation; he may only construe that conceived in vague or obscure terms, with regard to the understanding and application of which the parties disagree.

2225, 468 par. 2, 961, 1152, 1259, 1289, 1333, 1587, 2309 par. 2.

ART. 1552. What is paid before the expiration of the term, is not subject to restitution.

This rule does not apply to terms which have the value of conditions.

1542, 2313.

ART. 1553. The payment of the obligation cannot be demanded before the expiration of the term, excepting—

1. Of a debtor in bankruptcy or notoriously insolvent.
2. Of a debtor whose securities, through his own act or fault, have become extinguished or have diminished considerably in value. But in such case the debtor may demand the benefit of the term, by renewing or increasing the securities.

1882 last par., 2374, 2375, 2416, 2431, 2451, 1594.

ART. 1554. The debtor may renounce the term, unless the testator shall have disposed or the parties shall have agreed otherwise, or that the anticipation of the payment causes a creditor a damage which he manifestly proposed to avoid by means of the term.

In a contract of loan for consumption (*mutuum*) at interest, the provisions of article 2225 shall be observed.*

1654, 1649, 1709, 2379, 2013.

ART. 1555. What has been said in Title IV, Book III, *Of Limited Assignments*, applies to contracts.

* We believe that the citation to article 2225 is incorrect and that article 2229 should have been cited, which corresponding one is cited in the Code of Chile.

TITLE VI.

Of Alternative Obligations.

ART. 1556. An *alternative* obligation is that by which several things are owed, in such manner that the performance of one of them relieves from the performance of the others.

1583 No. 6, 1781 No. 6, last par.

ART. 1557. In order that the debtor may be discharged, he must pay or perform in its totality one of the things which he alternatively owes; and he cannot oblige the creditor to receive part of one and part of the other.

The debtor has the right of option, unless the contrary shall have been agreed upon.

1564, 1624, 1654.

ART. 1558. If the option be the debtor's, the creditor cannot specifically demand one of the things owed, except under the alternative in which they are owed.

ART. 1559. If the option be the debtor's, he may at will destroy or alienate any of the things which he alternatively owes as long as one of them subsists.

But if the option be the creditor's, and any of the things alternatively owed him cease to exist through the fault of the debtor, the creditor may, at his will, demand the price of this thing and the indemnity of damages, or any of the remaining things.

ART. 1560. If one of the things alternatively promised could not be the object of the obligation or becomes destroyed, the alternative obligation subsists as to the others; and if one only remains, the debtor is obligated as to the same.

ART. 1561. If all the things comprised in the alternative obligation cease to exist, without the fault of the debtor, the obligation is extinguished.

If through the fault of the debtor, he shall be obligated as to the price of any of the things he may select, when he has the right of selection; or as to the price of any of the things which the creditor may select, when the right of selection is vested in the creditor.

63 par. 3, 64, 1193, 1543, 1563, 1604 par. 2, 1606, 1607, 1729
et seq.

TITLE VII.

Of Optional Obligations.*

(De las Obligaciones Facultativas.)

ART. 1562. An *optional* obligation (*obligación facultativa*) is that which involves a determinate thing, but the debtor being granted the power to pay with this thing or another designated.

ART. 1563. In an optional obligation the creditor has no right to demand a thing other than that as to which the debtor is directly obligated, and if said thing ceases to exist without the fault of the debtor and before the time agreed for its delivery, the creditor shall not have the right to demand anything.

63 par. 3, 64, 1561, 1604 par. 2.

ART. 1564. In case of doubt as to whether the obligation is alternative or optional, it shall be considered alternative.

1557 par. 2, 1624.

TITLE VIII.

Of Indeterminate Obligations.

(De las Obligaciones de Género.)

ART. 1564. *Indeterminate* obligations (*obligaciones de género*) are those in which an individual of a particular class or kind is owed.

ART. 1566. In an indeterminate obligation, the creditor cannot demand specifically any individual, and the debtor is discharged therefrom upon the delivery of any individual of the kind, provided that it be of at least an average quality.

1172, 1173.

ART. 1567. The loss of some of the generic things does not extinguish the obligation, and the creditor cannot object to the debtor alienating or destroying them while others subsist for the satisfaction of what he owes.

*These obligations are not mentioned in the Spanish, French, Italian, Mexican or Dutch Civil Codes.

TITLE IX.

Of Solidary Obligations.

ART. 1568. In general, when an obligation as to a divisible thing has been contracted by or in favor of a number of persons, each of the debtors, in the first case, stands obligated only as to his part or quota in the debt, and each of the creditors, in the second case, has the right to demand only his part or quota in the credit.

But by virtue of the agreement, the testament or the law, there may be demanded of each of the debtors, or by each of the creditors, the total amount of the debt, and then the obligation is *solidary* or *in solidum*.

The solidarity must be expressly declared in all cases in which it is not established by the law.

637 par. 2, 2384, 2121 par. 2, 235, 418, 508, 599, 983, 1295, 1338, 1341, 1583 No. 3, 1584, 1694, 1896, 2214, 2344.

ART. 1569. The thing which is solidarily owed to a number or by a number, must be one and the same thing, even though it be owed in different manners; for example, purely and simply with regard to some, under a condition or a term, with regard to others.

ART. 1570. The debtor may make the payment to any of the solidary creditors he may select, unless he shall have been sued by one of them, in which case he must make the payment to the plaintiff.

The remission of the debt, compensation, novation between the debtor and any one of the solidary creditors, extinguishes the debt with regard to the others, in the same manner as payment would; provided that one of the latter shall not have already sued the debtor.

1521 No. 4, 1643, 1589, 1588.

ART. 1571. The creditor may proceed against all of the solidary debtors conjointly, or against any of them, at his option, without the latter having the right to plead the benefit of division.

2397, 1682.

ART. 1572. The suit brought by the creditor against some of the solidary debtors, does not extinguish the solidary obligation of any of them, excepting as to the part which may have been satisfied by the defendant.

ART. 1573. The creditor may expressly or impliedly renounce the solidarity with regard to one of the solidary debtors or with regard to all.

He renounces it in an implied manner in favor of one of them, when he shall have demanded or acknowledged the payment of his part or quota of the debt, this being stated in the suit or in the receipt, without the special reservation of the solidarity, or without the general reservation of his rights.

But this express or implied renunciation does not extinguish the solidary action of the creditor against the other debtors, for the entire portion of the credit that shall not have been satisfied by the debtor in whose benefit the solidarity was renounced.

The solidarity is renounced as to all the solidary debtors, when the creditor consents to the division of the debt.

66.

ART. 1574. The express or implied renunciation of the solidarity of a periodical pension is limited to the payments due, and extends to the future payments only when the creditor so states.

ART. 1575. If the creditor remits the debt as to any of the solidary debtors, he cannot subsequently exercise the action granted him by article 1561, except with a reduction of the share corresponding to the former in the debt.*

ART. 1576. The novation between the creditor and any one of the solidary debtors, discharges the rest, unless the latter accede to the newly constituted obligation.

1625 No. 2, 1704, 1588.

ART. 1577. The debtor sued may oppose to the suit all the exceptions resulting from the nature of the obligation, and in addition all his personal ones.

But he cannot oppose, by way of compensation, the credit of a solidary co-debtor against the plaintiff, if the solidary co-debtor shall not have ceded his right to him.

1682, 1716 par. 4, 2380, 2378.

ART. 1578. If the thing perishes through the fault or during the default of one of the solidary debtors, all of them are solidarily obligated as to the price, reserving the action of the co-debtors against the debtor who is negligent or in default. But the action for damages arising from the fault or default, can be brought by the creditor against the negligent or defaulting debtor only.

1613, 1583 No. 3, 1590, 1591.

* The citation to article 1561 is incorrect; article 1571 should have been cited.

ART. 1579. The solidary debtor who has paid the debt or who has extinguished it by any of the means equivalent to payment, is subrogated to the action of the creditor with all his privileges and securities, but limited with regard to each of the co-debtors to the part or share such co-debtor may have in the debt.

If the business for which the solidary obligation has been contracted, concerns only one or more of the solidary debtors, the latter shall be liable among themselves, according to their respective parts or quotas in the debt, and the other co-debtors shall be considered as sureties.

The part or quota of an insolvent co-debtor is divided among the others in proportion to their parts or quotas, including even those whom the creditor may have relieved from the solidarity.

1668 No. 3, 1727, 1583 No. 2, 1588.

ART. 1580. The heirs of each of the solidary debtors, are jointly obligated for the total debt; but each heir shall be liable only for that quota of the debt corresponding to his hereditary portion.

1155, 1585, 1597, 956, 1411.

TITLE X.

Of Divisible and Indivisible Obligations.

ART. 1581. An obligation is *divisible* or *indivisible*, according to whether it has or has not for its object a thing susceptible of division, whether material, intellectual or of a quota.

Thus, an obligation to grant a right of way, or that of building a house, are indivisible; that to pay a sum of money, divisible.

ART. 1582. The fact of an obligation being solidary does not give it the character of an indivisible one.

1584, 1585, 1896.

ART. 1583. If the obligation be neither solidary nor indivisible, each of the creditors may demand his own quota only, and each of the co-debtors is obligated only for the payment of his own; and the quota of the insolvent debtor shall not be a charge upon his co-debtors. The following cases are excepted:

1. The mortgage action or action of pledge is brought against that of the co-debtors who possesses the thing mortgaged or pledged, in whole or in part. A co-debtor who has paid his share of the debt cannot recover the pledge or obtain the cancellation of the mortgage, not even in part, until the total debt is extinguished; and the creditor whose share of the credit has been satisfied, cannot remit the pledge or cancel the mortgage, not even in part, until his co-creditors shall have been paid in full.

2. If the debt consists of a specific or determinate thing, the co-debtor who possesses it is obliged to make delivery thereof.

3. That co-debtor by whose act or fault the performance of the obligation has become impossible, is exclusively and solidarily liable for all damages to the creditor.

4. When by a testament or an agreement between the heirs, or by a partition of the inheritance, the obligation of paying the entire debt has been imposed upon one of the heirs, the creditor may either sue said heir for the entire debt, or each of the heirs for his *pro rata* share thereof.

If it shall have been expressly stipulated with the deceased that the payment could not be made in parts, not even by the heirs of the debtor, each of the latter may be obliged to come to an understanding with his co-heirs for the payment of the debt in full, or to pay it himself, reserving his action of warranty.

But the heirs of the creditor, if they do not institute their action jointly, can demand the payment of the debt only according to their quotas *pro rata*.

5. If a parcel of land or any other indeterminate thing is owed, the division of which would cause grave damage to the creditor, each of the co-debtors may be obliged to come to an agreement with the others for the payment of the entire thing, or to pay it himself, reserving his action for indemnity from the others.

But the heirs of the creditor cannot demand the payment of the whole thing, unless they shall bring their action conjointly.

6. When the obligation is an alternative one, if the selection is to be made by the creditors, they must all do it conjointly; and if by the debtors, all of the latter must do it conjointly.

1412, 952, 2433, 2430, 948, 950, 1598, 1579 par. 2, 1578, 1590, 1591, 1613 *et seq.*, 1397, 1415, 1416, 1430 par. 2, 2484, 1411 *et seq.*, 1378, 1556.

ART. 1584. Each of those who shall have jointly contracted an indivisible obligation, is obliged to perform it *in toto*, even though the solidarity shall not have been stipulated, and each of the creditors of an indivisible obligation has likewise the right to demand the total.

1568 par. 3, 1682, 1577.

ART. 1585. Each of the heirs of him who has contracted an indivisible obligation is obliged to satisfy it *in toto*, and each of the heirs of the creditor may demand its full performance.

1580.

ART. 1585. The prescription which is interrupted as to one of the debtors of the indivisible obligation, is so also as to the others.

943, 2540.

ART. 1587. If one of the debtors of an indivisible obligation should be sued, he may demand time to come to an understanding with the other debtors, in order to perform it among all; unless the obligation be of such a nature that he alone can perform it, as in such case he may be adjudged at once to a full performance, reserving his right of action against the other debtors, for the indemnification due him.

1551 par. 2, 1630 par. 2.

ART. 1588. The performance of an indivisible obligation by any of the obligees, extinguishes it with regard to all.

1570, 1576, 1579.

ART. 1589. If there be two or more creditors of an indivisible obligation, none of them can, without the consent of the others, remit the debt or receive the price of the thing owed. If any of the creditors shall remit the debt or receive the price of the thing, his co-creditors may still sue for the thing itself, upon paying to the debtor the part or quota of the creditor who may have remitted the debt or received the price of the thing.

1570 par. 2.

ART. 1590. An action for damages resulting from the non-performance of or delay in the performance of the indivisible obligation, is divisible; none of the creditors can bring it, and none of the debtors is subject thereto, except for the part falling to him.

If by the act or fault of one of the debtors of the indivisible obligation, the performance thereof has been rendered impossible, he alone shall be liable for all damages.

1578, 1583 No. 3, 2355, 1613 *et seq.*, 1597 pars. 2 and 3, 1896 par. 2.

ART. 1591. If of two co-debtors of an act which is to be performed in common, one is ready to perform it, and the other refuses to do so or delays, the latter only shall be liable for the damages incurred by the creditor through the non-performance or delay.

See citations to preceding article.

TITLE XI.

Of Obligations with a Penal Clause.

ART. 1592. The *penal clause* is that in which a person, in order to assure the performance of an obligation, subjects himself to a penalty which consists in giving or doing something in the event of not performing or delaying the principal obligation.

65.

ART. 1593. The nullity of the principal obligation carries with it that of the penal clause, but the nullity of the latter does not carry with it that of the principal obligation.

Nevertheless, when a person promises for another, imposing upon himself a penalty in the event that said person does not perform what was promised, the penalty shall be valid, even though the principal obligation should have no effect on account of a lack of consent of said person.

The same shall take place when a person stipulates with another in favor of a third person, and the person with whom the agreement is made subjects himself to a penalty in the event that he does not perform what was promised.

1507.

ART. 1594. Before the debtor is in default, the creditor cannot at his will demand the principal obligation or the penalty, but only the principal obligation; nor after the debtor is in default, can the creditor demand at the same time the performance of the principal obligation and the penalty, but only one of the two things, at his option; unless it shall appear that the penalty was stipulated for a simple delay, or unless it shall have been agreed that by the payment of the penalty the principal obligation shall not be understood to be extinguished.

1608, 1553, 1600, 2486, 1556, 1706, 751.

ART. 1595. If a term shall or shall not have been stipulated within which the principal obligation is to be performed, the debtor does not incur the penalty unless he is in default, if the obligation be positive.

If the obligation be negative, the penalty is incurred the moment the act which the debtor has obligated himself not to perform, is executed.

1608.

ART. 1596. If the debtor performs only a part of the principal obligation and the creditor accepts this part, he shall be entitled to a proportionate reduction in the penalty stipulated for non-performance of the principal obligation.

ART. 1597. When the obligation contracted with a penal cause is as to a divisible thing, the penalty, in the same manner as the principal obligation, is divided *pro rata* among the heirs of the debtor according to their hereditary quotas. The heir who violates the obligation, incurs, therefore, that part of the penalty which corresponds to his hereditary quota; and the creditor shall have no action against the co-heirs who have not violated the obligation.

The case is excepted in which the penal clause having been attached with the express intention of rendering a partial payment impossible, one of the heirs has prevented the payment in full; in such case the full penalty may be demanded of such heir, or their respective quota of each heir, reserving their remedy against the violating heir.

The same shall be observed when the obligation contracted with the penal clause is as to an indivisible thing

1580, 1591, 1583 No. 4, par. 2, 1590.

ART. 1598. If an immovable should be subject to a penalty by mortgage, the full penalty may be enforced against such immovable, reserving the remedy for indemnity from the proper person.

2433, 1583 Nos. 1 and 3.

ART. 1599. The penalty may be enforced in all cases in which it may have been specified, without the debtor being able to plead that the non-performance of the engagement has not prejudiced the creditor or has benefited him.

1602.

ART. 1600. The penalty and the indemnity for damages cannot be demanded at the same time, unless this shall have been expressly stipulated; but the creditor shall always have the right to demand the indemnity or the penalty.

1594.

ART. 1601. When by the principal agreement, one of the parties obligated himself to pay a specific sum, as the equivalent of what should be done by the other party, and the penalty consists likewise in the payment of a specific sum, the reduction of the second in all that it exceeds double the first, including the latter in the former, may be demanded.

The preceding provision does not apply to a loan for consumption (*mutuum*) nor to obligations whose value it is impossible to appraise or which is undetermined.

In the former the penalty may be reduced in so far as it exceeds the maximum interest which it is permitted to stipulate.

In the latter, the reduction thereof is left to the discretion of the Judge, when in view of the circumstances it shall appear enormous.

1498, 1947, 2231.

TITLE XII.

Of the Effect of Obligations.

ART. 1602. Every contract legally celebrated is a law for the contracting parties, and cannot be invalidated without their mutual consent or for legal causes.

1500, 1502, 1759, 1625, 1642, 1690 No. 3 par. 2, 1778.

ART. 1603. Contracts must be executed in good faith, and consequently are binding not only as to what is expressed therein, but also as to all the things which emanate precisely from the nature of the obligation, or which under the law belong thereto.

1618, 1501, 1621 par. 2, 1765.

ART. 1604. The debtor is liable only to the extent of a gross fault in contracts which by their nature are beneficial to the creditor only; he is liable for ordinary fault in contracts entered into for the mutual benefit of the parties; and very slight fault in contracts in which the debtor is the only one benefited.

The debtor is not liable for fortuitous events, unless he should be in default (the fortuitous event being such as shall not have damaged the thing owed, if it shall have been delivered to the creditor), or the fortuitous event should have been due to his fault.

The burden of proof as to the diligence or care is on the person who should have employed it; that of the fortuitous event, on the one pleading it.

All of which, nevertheless, shall be understood without prejudice to the special provisions of the laws, and the express stipulations of the parties.

63, 1561, 1563, 1616 par. 2, 1729 *et seq.*, 1932 par. 3, 1983, 2254, 1738, 1317, 1386, 2204, 2244, 64, 1733, 1757, 2176 par. 3, 298, 1827, 2155, 2179, 2203, 2306 par. 2, 2377, 2178, 1616 par. 3, 1732, 1545.

ART. 1605. The obligation to give entails that of delivering the things; and if the latter be a specific or certain one, it entails, furthermore, that of preserving it until the delivery, under the penalty of paying damages to the creditor who shall not be in default in receiving.

751, 1739.

ART. 1606. The obligation to preserve the thing requires that the proper care be employed in its custody.

ART. 1607. The risk of the specific thing whose delivery is owed, is always the creditor's; unless the debtor should be in default in the delivery, or have engaged to deliver one and the same thing to two or more persons by virtue of different obligations; in either of these cases, the risk shall be the debtor's until the delivery of the thing.

1193, 1543, 1561, 1648, 1876.

ART. 1608. The debtor incurs default:

1. When he has not performed the obligations within the term stipulated; unless the law, in special cases, require that a demand be made of the debtor in order to constitute him in default.
2. When the thing could not have been given or executed except within a certain time and the debtor has permitted it to pass without giving or executing the thing.
3. In other cases, when the debtor has been judicially reconvened by the creditor.

990, 991, 1656, 2007, 2035.

ART. 1609. In bilateral contracts neither of the contracting parties incurs default by failing to perform what was agreed, while the other does not perform it on his part, or does not wish to perform it in the proper manner and in due time.

1546, 1882 par. 3.

ART. 1610. If the obligation be to do, and the debtor incurs default, the creditor may demand, together with damages for the default, any of the following three things, at his will:

1. That the debtor be judicially compelled to perform the act agreed.
2. That he himself be authorized to have it performed by a third person at the expense of the debtor.
3. That the debtor indemnify him for the damage resulting from the breach of contract.

1630 par. 2.

ART. 1611. The engagement to celebrate a contract does not produce any obligation whatsoever in any case.*

ART. 1612. Every obligation not to do a thing is resolved in that of indemnifying damages, if the debtor fails to perform, and what is done cannot be undone.

If the thing done can be destroyed, and its destruction being necessary for the object in view at the time of celebrating the contract, the debtor shall be obliged thereto, or the creditor authorized to carry it out at the expense of the debtor.

If the object can be fully accomplished by other means, in such case the debtor willing to use them shall be heard.

The creditor shall in any case be indemnified.

1262 par. 1.

ART. 1613. The indemnity for damages comprises the emergent damage and the ceasing income, whether arising from the non-performance of the obligation or its imperfect performance, or through delay in performance.

Such cases are excepted in which the law expressly limits the indemnity to the emergent damage.

ART. 1614. By *emergent damage* is understood the damage or loss arising from the non-performance of the obligation or from its imperfect performance, or delay in its performance; and by *ceasing income* the profit of benefit which ceases to be received as a consequence of the non-performance of the obligation, its imperfect performance, or delay in its performance.

ART. 1615. Indemnity for damages is due from the moment the debtor incurs default, or, if the obligation be to not do, from the moment of the violation.

1608, 1612.

ART. 1616. If the debtor cannot be charged with fraud, he is liable only for the damages which were foreseen or could have been foreseen at the time of the contract; but if there be fraud, he is liable for all damages which were an immediate or direct consequence of the non-performance of the obligation, or of delay in its performance.

*Repealed and substituted by art. 89 of law 153 of 1887.

The default due to *force majeure* or a fortuitous event, does not give rise to indemnity for damages.

The stipulations of the contracting parties may modify these rules.

1604 pars. 2 and 4.

ART. 1617. If the obligation be to pay a sum of money, the indemnity for damages for the default is subject to the following rules:

1. Conventional interest shall continue to accrue, if a rate of interest higher than the legal one shall have been stipulated, or the legal interest begins to run, in a contrary case; however, the special provisions authorizing the collection of current interest in certain cases remain in force.

The legal rate of interest is fixed at six per cent. per annum.

2. It is not necessary for the creditor to prove damage, when he charges interest only; the fact of the delay is sufficient.

3. Back interest does not draw interest.

4. The preceding rule applies to all kinds of periodical rents, annuities and pensions.



2 235, 2395

TITLE XIII.

Of the Interpretation of Contracts.

ART. 1618. The intention of the contracting parties being clearly known, it should be observed rather than the literal meaning of the words.

1127 par. 2, 1418 par. 4, 1540, 1603.

ART. 1619. However general the terms of a contract may be, they shall be applied only to the subject-matter of the contract.

ART. 1620. The meaning in which some clauses may produce an effect, must be preferred to that in which it could not produce any effect.

32.

ART. 1621. In those cases in which a contrary intent should not appear, the construction most in accord with the nature of the contract shall be applied.

Clauses of common usage are presumed even though not expressed.

66, 1501, 1603, 32.

ART. 1622. The clauses of a contract shall be interpreted in relation to one another, giving to each the meaning most suitable to the contract in its totality.

They may also be interpreted by those of another contract between the same parties upon the same matter.

Or by the practical application that both parties may have made thereof, or one of the parties with the approval of the other party.

30.

ART. 1623. When a case has been expressed in a contract to explain the obligation, it shall not be understood that it was desired to restrict the agreement to such case only, to the exclusion of others to which it would naturally extend.

ART. 1624. If none of the preceding rules of interpretation can be applied, ambiguous clauses shall be interpreted in favor of the debtor.

But ambiguous clauses which may have been drawn or dictated by one of the parties, whether the creditor or the debtor, shall be interpreted against said party, provided that the ambiguity arises from the absence of an explanation which said party should have made.

1557 par. 2, 1564, 1646 par. 2, 478, 500.

TITLE XIV.

Of the Manner in which Obligations may be Extinguished and Primarily of Solution or Actual Payment.

ART. 1625. Every obligation may be extinguished by an agreement in which the parties interested, if capable of freely disposing of their property, consent to considering it null.

Obligations are further extinguished in whole or in part:

1. By solution or actual payment.
2. By novation.
3. By transaction.
4. By remission.
5. By compensation.
6. By confusion.
7. By the loss of the thing due.
8. By a declaration of nullity or by rescission.
9. By the event of the resolutive condition.
10. By prescription.

Transaction and prescription will be treated of at the end of this Book: the resolutive condition has been treated of in the Title *Of Conditional Obligations*.

1602.

CHAPTER I.

Of Actual Payment in General.

ART. 1626. Actual payment is the performance (*prestación*) of what is due.

ART. 1627. The payment shall be made under all respects in accordance with the tenor of the obligation; without prejudice to the provisions of law in special cases.

The creditor cannot be obliged to receive a thing other than that due him, not even under the pretext of the thing offered being of equal or greater value.

2407, 1648.

ART. 1628. In periodical payments, the receipts for three determined and consecutive installments shall presume the payment of the previous installments, provided that they should have been effected between the said creditor and debtor.

66, 1653 par. 2, 2234.

ART. 1629. The expenses occasioned by the payment shall be for the account of the debtor; without prejudice to what may have been stipulated and what the judge may order with regard to judicial costs.

1662, 2373.

CHAPTER 2.

By Whom Payment may be Made.

ART. 1630. Any person may pay for the debtor in his name, even without his knowledge or against his will, and even in spite of the creditor.

But if the obligation is to do, and if for the work involved the ability or talent of the debtor has been taken into consideration, the work cannot be done by another person against the will of the creditor.

1690 No. 3, par. 2, 1587, 1610, 2304.

ART. 1631. He who pays without the consent of the debtor shall have a right of action only against the latter for recovery of the amount paid; and he shall not be considered as subrogated by the law in the place and rights of the creditor, nor can he compel the creditor to subrogate him.

2309, 1668 No. 5, 1669, 1971, 2313 par. 2.

ART. 1632. He who pays against the will of the debtor, is not entitled to reimbursement by the debtor of the amount paid, unless the creditor voluntarily cedes to him his right of action.

2309, 2371, 2394 No. 5, par. 2, 2400 No. 2, 1959 *et seq.* 33 of law 57 of 1887.

ART. 1633. A payment by which the ownership must be transferred, is not valid, except in so far as the person paying is the owner of the thing paid or pays it with the consent of the owner.

Nor is a payment valid by which ownership is to be transferred, except in so far as the person paying has the power to alienate.

Nevertheless, when the thing paid is fungible (consumable), and the creditor has consumed it in good faith, the payment is validated, even though made by one who was not the owner and did not have the power to alienate.

752, 1505, 947 par. 2, 1871, 2490.

CHAPTER 3.

To Whom Payment is to be Made.

ART. 1634. In order that the payment may be valid, it must be made either to the creditor himself (under which name are understood all those

who may have succeeded him in the credit, even under a singular title), or to the person authorized by law or the Judge to receive for him, or to the person deputed by the creditor to make the collection.

A payment made in good faith to a person at the time in possession of the credit, is valid, even though it should afterwards appear that the credit did not belong to him.

494, 1540 par. 2, 1640, 761, 784, 762 par. 2, 1959 *et seq.* 33 of law 57 of 1887.

ART. 1635. A payment made to a person other than those mentioned in the preceding article, is valid, if the creditor ratifies it in an express or implied manner, when legitimately able to do so; or if the person who received the payment succeeds to the credit, as heir of the creditor, or under any other title whatsoever.

When the payment made to an incompetent person is ratified by the creditor, it shall be considered as valid from the beginning.

ART. 1636. The payment made to the creditor is null in the following cases:

1. If the creditor has not the administration of his property; unless it be proved that the thing paid has been employed for the benefit of the creditor, and when this benefit is established in accordance with article 1747.
2. If the Judge shall have attached the debt, or ordered the payment withheld.
3. If the insolvent debtor be paid in fraud of the creditors in whose favor bankruptcy proceedings have been instituted.

784, 1540 par. 2, 2490, 1521 Nos. 3 and 4.

ART. 1637. Tutors and curators receive legally for their respective wards; executors who had (*tuvieron*) this special charge or the seizin of the property of the deceased; the husbands for their wives in so far as they have the administration of the property of the latter; fathers of families for their children, under similar circumstances; fiscal collectors or those of public communities or establishments, for the fisc or the respective communities or establishments; and the other persons who by a special law or judicial decree are authorized therefor.*

784, 494, 1353, 1805, 295, 639, 640, 741 par. 2, 62, 1468, 1658 No. 2. 25, 26 of law 57 of 1887.

ART. 1638. The deputation to receive the payment may be conferred by a general power of attorney for the free administration of all the busi-

* This should be: “. . . the executors who *may have* (*tuvieren*) this special charge” and not “. . . who *had* (*tuvieron*) . . .” as herein stated.

ness of the creditor, or by a special power for the free administration of the business matter or matters involving the payment, or by a simple mandate communicated to the debtor.

2147, 2149.

ART. 1639. Any person whom the creditor commissions therefor, may be deputed to make the collection and validly receive the payment, even though at the time of being so deputed he does not have the free administration of his property nor is he capable of having it.

2154.

ART. 1640. The power of attorney conferred by a creditor to a person to sue the debtor, does not in itself empower him to receive the payment of the debt.

1637, 2158 par. 2.

ART. 1641. The power to receive for the creditor is not transmitted to the heirs or representatives of the person deputed by him for this purpose, unless the creditor shall have so expressed.

2189 No. 5.

ART. 1642. The person designated by both contracting parties to receive, does not lose this power by the mere will of the creditor; who, nevertheless, may be authorized by the Judge to revoke this commission, in all cases in which the debtor has no interest in objecting thereto.

1602, 1625.

ART. 1643. If it shall have been stipulated that the payment be made to the creditor himself, or to a third person, the payment made to either of the two is equally valid. And the creditor cannot prohibit that the payment be made to a third person, unless before the prohibition he shall have sued the debtor, or prove just cause therefor.

1570.

ART. 1644. The person deputed to receive becomes incapable through insanity or interdiction, through having passed under the power of the husband, for having made an assignment of property or through an execution having been levied on all of it; and, in general, through all the causes which extinguish a mandate.

2189.

CHAPTER 4.

Where Payment is to be Made.

ART. 1645. The payment must be made in the place designated by the agreement.

83, 85.

ART. 1646. If no place shall have been stipulated for the payment, and a certain thing is in question, the payment shall be made in the place where said thing was located at the time of the establishment of the obligation.

But if any other thing be in question, the payment shall be made in the domicile of the debtor.

1624.

ART. 1647. If the creditor or the debtor should have changed their domicile between the celebration of the contract and the payment, the latter shall always be made in the place where it would have been made without such change, unless the parties should mutually agree otherwise.

1602.

CHAPTER 5.

How Payment is to be Made.

ART. 1648. If the debt be of a specific thing, the creditor must receive it in the condition it may be; unless it shall have deteriorated and the deterioration be due to the act or fault of the debtor, or of the persons for whom the latter may be responsible; or unless the deterioration should have occurred after the debtor has incurred default, and is not due to a fortuitous event to which the thing would have been equally exposed in the possession of the creditor.

In either of these two suppositions, the creditor may demand the rescission of the contract and indemnity for damages; but if the creditor shall prefer to receive the thing, or if the deterioration should appear to be unimportant, indemnity for damages only shall be granted.

If the deterioration shall have occurred before the debtor incurs default, but not through his act or fault, but through that of a person for whom he is not responsible, the payment of the thing is valid in the state in which it may be; but the creditor may demand that the right of action which the debtor may have against the third person, the author of the damage, be ceded to him.

1627, 1606, 1616, 1604 par. 2, 1607.

ART. 1649. The debtor cannot oblige the creditor to receive part payments of the debt, excepting in the case of agreement to the contrary; and without prejudice to the provisions of the law in special cases.

The full payment of a debt comprises the accrued interest and damages due.

1652, 2229, 1554.

ART. 1650. If there be any controversy as to the amount of the debt, or its accessories, the Judge may order, until the question is decided, the payment of the amount not disputed.

751.

ART. 1651. If the obligation be to pay in installments, the payment shall be understood to be divided into equal parts; unless the contract should determine the part or quota to be paid at each installment.

ART. 1652. When there are different debts between the same creditor and debtor, each of them may be discharged separately; and consequently, the debtor of a number of years of a pension, rent or annuity, may oblige the creditor to receive the payment for one year, even though he do not pay him the others at the same time.

1649.

CHAPTER 6.

Of the Imputation of Payments.

ART. 1653. If a debt consist of principal and interest, the payment shall be imputed first to the interest, unless the creditor shall expressly consent that it be imputed to the principal.

If the creditor gives a receipt for the principal, without mentioning the interest, the latter shall be presumed to be paid.

2118, 2465, 2427, 66, 1628, 2234.

ART. 1654. If there be different debts, the debtor may impute the payment to the one he wishes; but without the consent of the creditor he cannot prefer a debt which is not due to one that is; and if the debtor do not impute the payment to any one in particular, the creditor may make the imputation in his receipt; and if the debtor accepts it, he shall not have a licit right to object later.

1554, 1557 par. 2, 2118.

ART. 1655. If neither of the parties shall have imputed the payment, the debt which was due at the time of the payment shall be given the

preference over that not due; and should there be no difference in this respect, the debt which the debtor may select.

1557 par. 2, 2118.

CHAPTER 7.

*Of Payment by Consignment.**

ART. 1656. In order that a payment may be valid, it is not necessary that it be made with the consent of the creditor; the payment is valid even against the will of the creditor, by means of consignment.

1663. 119 to 121 of law 153 of 1887.

ART. 1657. *Consignment* is the deposit of the thing owed, made by virtue of the unwillingness or non-appearance of the creditor to receive it, with the necessary formalities, in the hands of a third person.

ART. 1658. The consignment must be preceded by a tender, and in order to be valid, must contain the following conditions:†

1. That it be made by a person capable of paying.
2. That it be made to the creditor, if the latter be capable of receiving the payment, or to his legal representative.
3. That if the obligation be a limited one, or under a suspensive condition, the term shall have expired or the condition performed.
4. That the tender of the payment be made in the proper place.
5. That the debtor address to the Judge of competent jurisdiction a memorial stating the tender that he has made to the creditor, and expressing, in addition, what the debtor owes, including interest due, if there be any, and the other net charges; and if the tender of consignment be of a thing, an individual description of the thing offered.
6. That a copy of the memorial of tender be transmitted to the creditor or to his representative.

1504, 1637.

ART. 1659. The Judge, on the petition of a party, shall authorize the consignment and designate the person to whom it shall be made.

ART. 1660. The consignment shall be made with a citation of the creditor or his legal representative, and an act or record thereof shall be made before the same Judge who shall have authorized the consignment.

If the creditor or his representative should not have attended this act, they shall be notified of the deposit with an intimation to receive the thing consigned.

1658 No. 6.

* See La. Civil Code, arts. 2167 [2163] to 2169 [2165].

† Which must be valid, the consignment or the tender? The Code of Chile says: "The consignment must be preceded by the tender, and in order that the tender may be valid . . ." (*Angarita*).

ART. 1661. If the creditor should be absent from the place where the payment is to be made, and should not have a legal representative there, the provisions of Nos. 1, 3, 4 and 5, of article 1658, shall apply.

The tender shall be made before the Judge; who, after ascertaining the absence of the creditor and of a person to represent him, shall authorize the consignment, and shall designate the person to whom it is to be made.

In such case, a record of the consignment shall also be made and the deposit shall be communicated to the counsel who must be appointed for the absentee.

ART. 1662. The expenses of every valid tender and consignment shall be borne by the creditor.

ART. 1663. The effect of a valid consignment is to extinguish the obligation, consequently cause the interest to cease and exempt the debtor from the danger to the thing; all of this from the date of the consignment.

ART. 1664. Until the consignment shall have been accepted by the creditor, or the payment declared sufficient by a judgment having the force of *res judicata*, the debtor may withdraw the consignment; and after being withdrawn, it shall be considered as of no value or effect with regard to the consignor and his co-debtors and sureties.

1494.

ART. 1665. When the obligation shall have been irrevocably extinguished, the consignment may still be withdrawn, if the creditor consent thereto. But in such case the obligation shall be considered as an entirely new one; the co-debtors and sureties shall be exonerated therefrom, and the creditor shall not retain the privileges or mortgages of his original credit. If by the will of the parties the previous mortgages should be renewed, they shall be again recorded, and their date shall be that of the new record.

1602, 1687, 1690 No. 1, 1696, 1703.

CHAPTER 8.

*Of Payment with Subrogation.**

ART. 1666. *Subrogation* is the transmission of the rights of the creditor to a third person, who pays him.

ART. 1667. A third person is subrogated in the rights of the creditor either by virtue of the law or by virtue of an agreement on the part of the creditor.

1632, 1959 *et seq.* 33 of law 57 of 1887.

* See La. Civil Code, arts. 2159 [2155] to 2162 [2158].

ART. 1668. The subrogation takes place by operation of the law, and even against the will of the creditor, in all cases provided for by law and especially for the benefit:

1. Of a creditor who pays another creditor having a preferred right by reason of his privilege or mortgage.

2. Of the purchaser of immovable property, who is obliged to pay the creditors to whom this property is mortgaged.

3. Of him who pays a debt to the payment of which he is bound in a solidary or subsidiary manner.

4. Of the beneficiary heir who pays from his own funds the debts of the inheritance.

5. Of him who pays the debt of another, the debtor expressly or impliedly consenting thereto.

6. Of him who has loaned money to the debtor for the payment, as shown in the public instrument covering the loan, and it appearing in the public instrument of the payment, that the debt was discharged with the same money.

1695, 957 par. 3, 1295, 1423, 1451 par. 2, 1698, 1736, 2026 par. 2, 2060 No. 5, 2120 par. 1, 2132 par. 2, 2212, 2348, 2255, 2313 par. 2, 2395, 2397, 2403, 2489, 2453 par. 2, 1579, 1671, 1789.

ART. 1669. The subrogation is effected by virtue of an agreement on the part of the creditor, when the latter, receiving the payment of the debt from a third person, voluntarily subrogates him in all the rights and actions corresponding to him as such creditor; the subrogation in such case is subject to the rule governing the cession of rights, and must be made in the receipt.

1695, 1632, 1959 *et seq.* 33 of law 57 of 1887.

ART. 1670. The subrogation, legal as well as conventional, transfers to the new creditor all the rights, actions and privileges, pledges and mortgages of the former creditor, against the principal debtor as well as against any third persons, solidarily and subsidiarily bound for the debt.

If the creditor shall have been paid in part only, he may exercise his rights with regard to the balance due him, in preference to him who has paid only a part of the credit.

1691 par. 2, 1964, 2493.

ART. 1671. If several persons shall have lent the debtor money for the payment of a debt, there shall be no preference among them, whatever may have been the dates of the different loans and subrogations.*

* The Code of Chile says “. . . loans or subrogations.”

CHAPTER 9.

Of Payment by the Cession of Property or by an Executory Action of the Creditor or Creditors.

ART. 1672. The *cession* of property * is the voluntary relinquishment which the debtor makes of all his property to his creditor or creditors, when as a consequence of inevitable accidents, he finds himself unable to pay his debts.

2492.

ART. 1673. This surrender of property shall be admitted by the Judge after an investigation as to the cause, and the debtor may petition therefor, notwithstanding any stipulation to the contrary.

15, 1526.

ART. 1674. In order to obtain the cession, the debtor must establish his lack of responsibility for the bad state of his affairs, provided any of the creditors should require it.

ART. 1675. The creditors shall be obliged to accept the cession, excepting in the following cases:

1. If the creditor has knowingly alienated, pledged or mortgaged as his own the property of others.
2. If he has been convicted of theft or robbery, falsification or fraudulent bankruptcy.
3. If he has obtained compositions or respites from his creditors.
4. If he has wasted his property.
5. If he has not made a detailed and truthful account of the state of his affairs, or has availed himself of any other fraudulent means to prejudice his creditors.

ART. 1676. When the debtor shall have risked in gambling a larger sum than a prudent father of a family would risk in entertainment in such gambling, it is a case in which waste is presumed.

534.

ART. 1677. The cession shall comprise all the property, rights and actions of the debtor, excepting those not subject to attachment.

The following are not subject to attachment:

1. Two-thirds of the salary, income or pension, which the debtor may enjoy by virtue of his employment, trade, profession or from any other source.
2. The bed, bedstead and bedding (*lecho*) of the debtor, those of his

* See La. Civil Code, arts. 2170 [2166] to 2184 [2180].

wife, those of the children living with him and at his expense, and the clothing necessary for the protection of all these persons.

3. The books relating to the profession of the debtor, to the value of two hundred pesos, to be selected by the said debtor.

4. The machinery and instruments which the debtor uses for instruction in a certain science or art, to said value and subject to the same selection.

5. The uniforms and equipment of military persons, according to their arm and rank.

6. The implements of the debtor who is an artisan or field laborer, necessary for his individual labor.

7. Articles for support and fuel in the possession of the debtor, to the amount necessary for the consumption of the family for a month.

8. The ownership of the objects which the debtor holds in trust.

9. Rights, the exercise of which is purely personal, such as use and habitation.

1683, 1942, 2488, 1720 par. 2, 1721 par. 2, 794, 862, 1974, 2489 par. 3, 870, 878, 1500, 1767.

ART. 1678. The cession of the property produces the following effects:

1. The debts are extinguished to the amount discharged by said surrendered property.

2. If the property surrendered should not have been sufficient for the full discharge of the debts, and the debtor later acquires further property, he is obliged to complete the payment with the latter.

The surrender does not transfer the ownership of the property of the debtor to the creditors, but simply the power to dispose thereof or of their fruits to the extent of paying their credits.

2490, 2491, 1684, 1685 No. 6.

ART. 1679. The debtor may withdraw the surrender before the sale of the property or of any portion thereof, and recover that existing, upon payment to his creditors.

ART. 1680. The cession of the property having been made, the creditors may leave the administration thereof to the debtor, and make such arrangements with him as they may deem advisable, provided that a majority of the creditors present consent thereto.

ART. 1681. The consent of the majority obtained in the form prescribed by the laws of procedure, shall be binding upon all the creditors who may have been cited in due form.

But the privileged, pledge or mortgage creditors, shall not be prejudiced by the decision of the majority if they should have abstained from voting.

ART. 1682. The cession of the property does not benefit the solidary or subsidiary co-debtors, nor one who accepted the inheritance of the debtor without the benefit of inventory.

2380, 1571, 1577, 1583, 1584, 1302, 1304.

ART. 1683. What is provided regarding the cession in articles 1677 *et seq.*, applies to the attachment of the property by the executory action of the creditor or creditors.

CHAPTER 10.

Of Payment with the Benefit of Competency.

ART. 1684. The *benefit of competency* is that which is granted certain debtors not to be bound to pay more than they conveniently can, leaving them, consequently, what is indispensable for a modest subsistence, according to their class and circumstances, and with a charge of restitution, when their fortune shall improve.

1678 No. 2.

ART. 1685. The creditor is obliged to grant this benefit:

1. To his descendants or ascendants.
2. To his spouse, if not divorced through his fault.
3. To his brothers and sisters, provided that they have not been guilty of an offense against the creditor as grave as those designated as a cause for disinherison with regard to descendants or ascendants.
4. To their co-partners in the same case; but only in reciprocal actions arising from the articles of co-partnership.
5. To the donor; but only when it is a question of making him perform the donation promised.
6. To a *bona fide* debtor, who surrendered his property and who is being proceeded against as to the property subsequently acquired for the full payment of the debts previous to the cession; but only the creditors in whose favor the cession was made owe him this benefit.

166, 1266, 1474, 1480, 1678 No. 2, 2380.

ART. 1686. Support and the benefit cannot be demanded at the same time. The debtor shall select.

TITLE XV.

Of Novation.*

ART. 1687. *Novation* is the substitution of a new obligation for a previous one, which is thereby extinguished.

1699 *et seq.*

ART. 1688. An attorney in fact or mandatary cannot make a novation if he be not specially empowered therefor, or shall not have the free administration of the affairs of the principal or donor or of the matter involving the debt.

1505, 2157, 2158, 2159, 2160.

ART. 1689. In order that the novation may be valid, it is necessary that both the original obligation and the contract of novation, be valid, at least naturally.

1504, 1527.

ART. 1690. The novation may be made in three manners:

1. By substituting a new obligation for another, without a new creditor or debtor intervening.
2. By the debtor contracting a new obligation with regard to a third person, the first creditor consequently declaring him discharged from the original obligation.
3. By the substitution of a new debtor for the old debtor, who consequently is discharged.

This third kind of novation may be made without the consent of the first debtor. When made with his consent, the second debtor is said to be *delegated* by the first.

2407, 1665, 1694, 1696, 1630.

ART. 1691. If the debtor does nothing but depute a person who is to pay for him, or the creditor a person who is to receive for him, there is no novation.

Nor does a novation exist when a third person is subrogated in the rights of the creditor.

1666.

ART. 1692. If the old obligation is a pure one, and the new one is subject to a suspensive condition, or if, on the contrary, the old one is

* See La. Civil Code, arts. 2185 [2181] to 2198 [2194].

subject to a suspensive condition and the new obligation is pure, there is no novation, while the condition is pending; and if the condition lapses or before its accomplishment the old obligation is extinguished, there will be no novation.

Nevertheless, if the parties, in making the second contract, shall agree that the first contract be thereby abolished without awaiting the accomplishment of the pending condition, the will of the parties shall be respected.

ART. 1693. In order that there may be novation, it is necessary that the parties declare it, or that it shall indubitably appear that their intention has been to make a novation, because the new obligation carries with it the extinguishment of the old one.

If the intention to make a novation should not be evident, the two obligations shall be considered as co-existent, and the original obligation shall be valid in so far as the second one is not in contravention thereof, the privileges and sureties of the first one subsisting as to this part.

1602, 1618 *et seq.*

ART. 1694. The substitution of a new debtor for another does not produce a novation, if the creditor does not express his intention of discharging the original debtor. In the absence of such statement, it shall be understood that the third person is simply deputed by the debtor to make the payment, or that the said third person binds himself with him *in solido* or subsidiarily, as may be deduced from the tenor or spirit of the act.

1690 No. 3, 1573 par. 3.

ART. 1695. If the person delegated is substituted against his will for the person making the delegation, there is no novation, but only a cession of actions by the person making the delegation to his creditor; and the effects of this act are subject to the rules governing the cession of actions.

1668, 1669, 1959 *et seq.* 33 of law 57 of 1887.

ART. 1696. The creditor who has discharged the original creditor,* has later no right of action against him, even though the new debtor should become insolvent; unless in the contract of novation such case should have been expressly reserved, or that the insolvency should have been prior and public, or known to the original debtor.

1665.

ART. 1697. He who having been delegated by a person whose debtor

* The Code of Chile says as it should say: "The creditor who has discharged the original debtor. . . ."

he believed himself to be and was not, promises the creditor of the latter to pay him in order to free himself of the false debt, is obliged to keep his promise; but he shall retain his right of action against the person making the delegation to secure payment by him or reimbursement of the amount paid.

ART. 1698. He who was delegated by a person who believed himself a debtor and was not, is not obligated to the creditor, and if he pay in the belief of the debt being a true one, his status as to the person making the delegation is the same as if the debt shall have been true, and the person making the delegation reserves his right to restitution of the amount improperly paid.

1502, 1508, 1510, 2313 par. 2.

ART. 1699. In whatsoever manner the novation be made, the interest of the first debt is thereby extinguished, unless otherwise stipulated.

ART. 1700. Whether the novation operate by the substitution of a new debtor or without it, the privileges of the first debt are extinguished by the novation.

ART. 1701. Even though the novation operate without the substitution of a new debtor, the pledges and mortgages of the original obligation do not pass to the subsequent obligation, unless the creditor and the debtor shall expressly agree as to the reservation.

But the reservation of the pledges and mortgages of the original obligation is not valid, when the things pledged and mortgaged belong to third persons who do not expressly agree to the second obligation.*

Nor is the reservation valid in so far as the second obligation exceeds the first. If, for example, the first debt did not produce interest, and the second does, the mortgage of the first shall not be extended to the interest.

ART. 1702. If the novation operate by the substitution of a new debtor, the reservation cannot have any effect on the property of the new debtor, not even with his consent.

And if the novation operate between the creditor and one of his debtors *in solido*, the reservation can be effective only with regard to the latter. The pledges and mortgages constituted by his co-debtors *in solidum* are extinguished notwithstanding any provision to the contrary; unless the latter expressly consent to the second obligation.

ART. 1703. In the cases and amounts as to which the reservation cannot have any effect, the pledges and mortgages may be renewed; but with the same formalities as if they were constituted for the first time, and their date shall be that of the renewal.

* The Code of Chile says: “. . . when the things pledged or mortgaged.”

ART. 1704. The novation discharges the solidary or subsidiary co-debtors who have not consented thereto.

1576, 1625 No. 2, 2484 par. 2.

ART. 1705. When the second obligation consists simply in adding or deducting a specific or generic thing or amount from the first one, the subsidiary and solidary co-debtors may be obligated to the extent of what they agree to in both obligations.

ART. 1706. If the new obligation be limited to imposing a penalty in the event of the first one not being performed, and the first obligation and the penalty are both demandable, the privileges, sureties, pledges and mortgages shall subsist to the extent of the principal debt without the penalty.

But, if in a case of violation, the penalty only is demandable, novation shall be understood from the moment the creditor demands the penalty only, and by said act, the privileges, pledges and mortgages of the original obligation shall be extinguished, and those who consented to the original obligation and not to the penal stipulation *in solidum* or subsidiarily, shall be discharged.

1594.

ART. 1707. The simple change of the place for payment shall leave the privileges, pledges and mortgages of the obligation and the liability of the solidary and subsidiary co-debtors subsistent, but without any new charge.

ART. 1708. The mere extension of the term of a debt does not constitute a novation; but it puts an end to the liability of the sureties and extinguishes the pledges and mortgages constituted on other property than the debtor's; unless the sureties or the owners of the things pledged or mortgaged expressly consent to the extension.

2381.

ART. 1709. Nor does the mere reduction of the term constitute a novation; but the solidary or subsidiary co-debtors cannot be sued, until the expiration of the term originally stipulated.

1554, 2398.

ART. 1710. If the creditor has assented to the new obligation, under the condition that the solidary or subsidiary co-debtors should consent thereto, and if the solidary or subsidiary co-debtors should not consent, the novation shall be considered as not having been made.

1576.

TITLE XVI.

Of Remission.

ART. 1711. The *remission* or condonation of a debt has no value, unless the creditor is able to dispose of the thing the object thereof.

1502, 1504.

ART. 1712. A remission due to a mere liberality, is in all things subject to the rules governing donations *inter vivos*, and requires insinuation in cases in which a donation *inter vivos* needs it.

492, 1458, 1452 par. 3, 1443 *et seq.*

ART. 1713. There is an implied remission when the creditor voluntarily delivers to the debtor the title of the obligation, or destroys or cancels it with the intention of extinguishing the debt. The creditor may prove that the delivery, destruction or cancellation of the title was not voluntary or was not effected with the intention of remitting the debt. But in the absence of such proof, it shall be considered that there was an intention to remit it.

The surrender of the pledge or mortgage is not sufficient to presume the remission of the debt.

1450, 1186, 66.

TITLE XVII.

Of Compensation.*

ART. 1714. When two persons are indebted to each other, there takes place between them a *compensation* (or set off) which extinguishes both debts, in the manner and in the cases hereinafter expressed.

ART. 1715. The compensation takes place by the mere operation of the law and even unknown to the debtors; and both debts are reciprocally extinguished to the extent of their values, from the moment that the following conditions are attendant as to both:

1. That they both are of money or fungible or indeterminate things of the same kind and quality.
2. That both debts are liquidated; and
3. That they are both actually demandable.

Respite granted the debtor prevent the compensation; but this provision does not apply to the days of grace granted by a creditor to his debtor.

1719, 1723.

ART. 1716. In order that the compensation may take place, it is necessary that both parties be mutually indebted to each other

Thus, the principal debtor cannot oppose to his creditor, by way of compensation, what the creditor owes the surety.

Nor if the debtor of a ward be sued by the tutor or curator, can he oppose to him by way of compensation what the tutor or curator may owe him.

Nor if one of several debtors *in solido* be sued, can he compensate his debt with the credits of his co-debtors against the same creditor; unless the latter shall have ceded them to him.

1577 par. 2.

ART. 1717. The mandatary may oppose to the creditor of the principal not only the credits of the latter, but also his own credits against the same creditor, upon giving surety that the principal will approve the compensation. But what the mandatary owes a third person cannot be compensated with what the latter owes the principal, except with the consent of the said principal.

2158.

* See La. Civil Code, arts. 2207 [2203] to 2216 [2213].

ART. 1718. The debtor who accepts without any reservation the cession which the creditor may have made of his rights to a third person, cannot oppose in compensation to the assignee the credits which before the acceptance he could have opposed to the assignor.

If the cession shall not have been accepted, the debtor may oppose to the assignee all the credits which, before he was notified of the cession, he may have acquired against the assignor, even though they should not have become demandable until after the notice.

1960, 1962, 1963.

ART. 1719. Notwithstanding the compensation having taken place by operation of law, the debtor who does not plead it, ignoring a credit which he can oppose to the debt, shall preserve together with the credit itself the sureties, privileges, pledges and mortgages constituted for the security thereof.

ART. 1720. The compensation cannot take place to the prejudice of the rights of a third person.

Thus, a credit having been attached, the debtor cannot compensate it to the prejudice of the attachment creditor with any credit of his own acquired after the attachment.

1521 Nos. 3 and 4.

ART. 1721. Compensation cannot be opposed to a suit for the restitution of a thing of which its owner has been unjustly deprived, nor to a suit for the restitution of a deposit, or of a loan for use (*commodatum*), even though when the thing having been lost, the obligation to pay it in money only subsists.

Nor can compensation be opposed to a suit for indemnity, for an act of violence or fraud, nor to a suit for allowance for support not subject to attachment.

2236, 2251, 2257, 2258, 2200, 2207, 424, 425, 426, 1677 No. 1.

ART. 1722. When there are a number of compensable debts, the same rules must be observed in the compensation as in the imputation of payment.

1653, 1654, 1655.

ART. 1723. When both debts are not payable at the same place, neither of the parties can oppose the compensation, unless both debts be of money and that he who opposes the compensation takes into consideration the cost of the remittance.

TITLE XVIII.

Of Confusion.*

ART. 1724. When the qualities of creditor and debtor are united in the same person, there arises a *confusion* of right, which extinguishes the debt and produces the same effects as payment.

ART. 1725. The confusion which extinguishes the principal obligation, extinguishes the security; but the confusion which extinguishes the security, does not extinguish the principal obligation.

ART. 1726. If the union of the two qualities takes place with regard to part of the debt only, confusion does not take place, nor is the debt extinguished except as to that part.

ART. 1727. If there be confusion between one of several debtors *in solido* and the creditor, the former may sue each of his co-debtors for the part or share respectively corresponding to them in the debt. If, on the contrary, there be confusion between one of several creditors *in solido* and the debtor, the former shall be obligated to each of his co-creditors for the part or quota respectively corresponding to them in the credit.

1579.

ART. 1728. The credits and debts of the heir who accepted under the benefit of inventory, are not confounded with the hereditary debts and credits.

1304, 1316.

* See La. Civil Code, arts. 2217 [2214] and 2218 [2215].

TITLE XIX.

Of the Loss of the Thing Due.

ART. 1729. When the certain and determinate substance due perishes, by destruction, or by becoming unsalable, or because it disappears and it is not known whether it exists, the obligation is extinguished; reserving, however, the exceptions contained in the following articles:

1193, 1561, 1604 par. 2, 1827, 1877, 2179.

ART. 1730. If the thing perishes while in the possession of the debtor, it shall be presumed to have been through his act or fault.

66, 63, 1604 par. 3.

ART. 1731. If the determinate thing perish through the fault or while the debtor is in default, the obligation of the latter subsists, but the object changes; the debtor is obligated for the price of the thing and to indemnify the creditor.

Nevertheless, if the debtor be in default, and the determinate substance due perish through a fortuitous accident, which said substance would equally have suffered in the possession of the creditor, damages for the default only shall be due. But if the fortuitous accident could not have taken place also in the possession of the creditor, the price of the thing and damages for the default, are due.

1608, 1604 par. 2, 1735.

ART. 1732. If the debtor shall have constituted himself liable for any fortuitous accident, or of any one in particular, what may have been agreed shall be observed.

1602, 1604 par. 4, 2178.

ART. 1733. The debtor is bound to prove the fortuitous accident which he pleads.

If, being in default, he shall claim that the determinate substance would equally have been destroyed in the possession of the creditor, he shall also be obliged to prove it.

1604 par. 3, 1757.

ART. 1734. If a thing lost, whose existence was ignored, should reappear, the creditor may demand it, upon returning what he may have received by reason of its price.

ART. 1735. He who shall have stolen or robbed a certain substance, shall not be permitted to plead that the thing has been destroyed through a fortuitous accident, even of those which would have produced the destruction or loss of the certain substance in possession of the creditor.

ART. 1736. Even though by the destruction of the thing the obligation of the debtor should be extinguished, the creditor may demand that the rights and actions which the debtor may have against those through whose act or fault the thing perished, be ceded to him.

1668, 1959 *et seq.* 33 of law 57 of 1887.

ART. 1737. If the thing due be destroyed by a voluntary act of the debtor, who without fault ignored the obligation, the price only shall be due, without any further indemnity for damages.

ART. 1738. In the act or fault of the debtor is comprised the act or fault of the persons for whom he may be responsible.

63, 2347 *et seq*

ART. 1739. The destruction of the thing in the possession of the debtor, after it shall have been offered to the creditor, and during the default of the latter in receiving it, renders the debtor liable only for a grave fault or fraud.

TITLE XX.

Of Nullity and Rescission.

ART. 1740. Any act or contract which lacks any of the requisites prescribed by law for the validity of the said act or contract according to its kind or class and the status of the parties, is null.

The nullity may be absolute or relative.

1502, 1504, 1500.

ART. 1741. The nullity produced by an illicit object or cause (consideration), and the nullity produced by the omission of some requisite or formality prescribed by law for the validity of certain acts or contracts in view of the nature thereof, and not the quality or status of the persons executing or performing them, are *absolute nullities*.

There is also an *absolute nullity* in acts or contracts of persons absolutely incapable.

Any other kind of vice produces a *relative nullity*, and gives right to the rescission of the act or contract.

ART. 1742. The absolute nullity can and must be declared by the Judge or Prefect, even without a petition of a party, when it is manifestly evident in the act or contract; it may be pleaded by any person having an interest therein, excepting the person who has executed the act or celebrated the contract, knowing or being obliged to know of the vice which invalidated it; his declaration may likewise be demanded by the Department of Public Prosecution (*Ministerio Público*) in the interests of morals or of the law; and it cannot be cured by the ratification of the parties, nor by a lapse of time under thirty years.

532, 541, 629, 630, 2531 rule 3, cases 1 and 2, 2532. 90 of law 153 of 1887.

ART. 1743. The relative nullity can be declared by the Judge or Prefect only at the instance of a party; nor can such declaration be demanded by the Department of Public Prosecution in the sole interest of the law; nor can it be pleaded by any persons but those in whose benefit it has been established by the laws, or by their heirs or assigns; and it may be cured by the lapse of time or by the ratification of the parties.

The incapacity of a married woman who has acted without the authority of the husband or of the Judge or Prefect in substitution, when she should have obtained it, shall be understood as established for the benefit of the said wife and of the husband.

See citations to preceding article, and article 2513, which is an illustration.

ART. 1744. If on the part of an incapacitated person there should have been fraud to induce the act or contract, neither he nor his heirs or assigns can plead nullity.

Nevertheless, an assertion of being of age or that the interdiction or other cause of incapacity does not exist, will not disqualify the incapacitated person from obtaining a judgment of nullity.

1515.

ART. 1745. The acts or contracts of incapacitated persons, in which the necessary formalities and requisites have not been omitted, cannot be declared null nor rescinded, except for the causes under which persons having the free administration of their property would enjoy this benefit.

Public corporations and juristic persons are assimilated as to the nullity of their acts or contracts to persons under tutorship or guardianship.

ART. 1746. The nullity pronounced by a judgment which has the force of *res judicata*, entitles the parties to be restored to the same state in which they would have been if the null act or contract had not existed; without prejudice to the provisions regarding illicit objects or causes (considerations.)

In the mutual restitutions which the contracting parties may have to make by virtue of this judgment, each shall be responsible for the loss of the specific things or their deterioration, for the interest and fruits, and the allowance of the necessary improvements, useful or of luxury, taking into consideration fortuitous accidents, and the possession in good or bad faith of the parties; all according to the general rules and without prejudice to the provisions of the following article.

963 *et seq.*, 1948 par. 2, 768.

ART. 1747. If a contract celebrated with an incapacitated person without the requisites required by law is declared null, he who contracted with said person cannot demand the restitution or reimbursement of what he may have spent or paid by virtue of the contract, except in so far as he shall establish that the incapacitated person profited therefrom.

It shall be presumed that the latter has profited; in so far as the things paid or the things acquired by means thereof should have been necessary to him; or in so far as the things paid or those acquired by means of the same, which should not have been necessary to him, shall subsist and it is desired to retain them.

963, 964, 1636, 2243, 2304, 2309, 192, 261, 1806 par. 2, 1545.

ART. 1748. A nullity judicially declared produces an action for reven-

dication against third possessors, without prejudice to the legal exceptions.

1812, 947 par. 2, 1933, 1934, 1951 par. 2.

ART. 1749. When two or more persons have contracted with a third person, the nullity declared in favor of one of them shall not avail the others.

17, 2484 par. 2.

ART. 1750. The term within which to demand the rescission shall last four years.

This period of four years shall be counted, in a case of violence, from the day on which the violence may have ceased; in a case of error or of fraud, from the day of the celebration of the act or contract.

When the nullity arises from a legal incapacity, the term of four years shall be counted from the day upon which this incapacity may have ceased.

The term of four years shall be doubled for juristic persons who by assimilation to minors may have the right to demand the declaration of nullity, and shall be counted from the date of the contract.

All of this is understood in the cases in which another term shall not have been fixed by special laws.

1484, 1838 par. 3, 1913, 1487, 1954.

ART. 1751. Heirs who have attained legal age shall enjoy the full term of four years if it should not have begun to run; and shall enjoy the remainder, otherwise. With regard to heirs who are minors, the term of four years or the remainder thereof begins to run from the day they attain their majority.

But in such case the declaration of nullity cannot be demanded if thirty years shall have elapsed from the date of the celebration of the act or contract.

1487, 2531 rule 3, conditions 1 and 2, 2532.

ART. 1752. The ratification necessary to cure the nullity when the vice of the contract is susceptible of this remedy, may be express or implied.

ART. 1753. In order that an express ratification may be valid, it must be made with the formalities to which the act or contract ratified is subject in accordance with the law.

ART. 1754. An implied ratification is the voluntary execution of the obligation contracted.

ART. 1755. Neither an express nor an implied ratification shall be

valid if it does not emanate from the party or parties having a right to plead the nullity.

ART. 1756. The express or implied ratification of one who is incapable of contracting is not valid.

TITLE XXI.

Of the Proof of Obligations.*

ART. 1757. The burden of the proof of obligations or their extinction is upon the person who pleads either.

The proofs consist of public or private instruments, witnesses, presumptions, confession of the party, deferred oath and personal inspection by the Judge or Prefect.

512, 1604 par. 3, 1733, 2242, 2249, 2316.

ART. 1758. A *public* or *authentic instrument* is that authorized with the legal formalities by the competent official.

When executed before a notary or the person discharging his duties, and incorporated in the respective protocol, it is called a public document (*escritura pública*).

ART. 1759. A public instrument is full proof with regard to the fact of the execution and the date thereof; but not with regard to the truth of the declarations which the persons interested may have made therein. In this part they are full proof only against the persons making them.

The obligations and discharges contained therein are full proof with regard to the parties thereto and the persons to whom said obligations and discharges may be transferred under a universal or singular title.

1822, 1934, 394, 17, 1602, 2484, 2505.

ART. 1760. The absence of a public instrument cannot be supplied by other proof in the acts or contracts in which the law requires this formality; and they shall be considered as not executed or celebrated, even though a promise be made therein to embody them in a public instrument, within a certain term, under a penal clause: such clause shall have no effect whatsoever.

*This title has been supplemented by law 153 of 1887, articles 91 to 93.

With the exception of the cases indicated in this article, an instrument which is defective on account of the lack of jurisdiction of the official, or for another fault in the form, shall be valid as a private instrument if signed by the parties.

1769, 239, 212, 1457, 1460, 1461, 1548, 1772 par. 2, 1781, No. 6, par. 2, 1789, 1843, 1846, 1857 par. 2, 1940, 2292, 2434, 2457 last par. 22, 760, 1526. 56, 89, 106, 127 of law 153 of 1887.

ART. 1761. A private instrument, acknowledged by the party against whom it is opposed, or which has been ordered acknowledged in the cases and with the requisites prescribed by law, has the value of a public instrument with regard to those who appear or are reputed to have subscribed them, and the persons to whom the obligations and rights of the latter have been transferred.

752.

ART. 1762. The date of a private instrument is not counted with regard to third persons, but from the date of the death of any of those who have signed it, or from the date on which it was copied in a public register, or on which it appears to have been produced in court, or on which it may have been considered and inventoried by a competent official in such character.

ART. 1763. Domestic entries, registers and papers, are proof only against the person who has written or signed them; but only in that which appears clearly, and provided that the party desiring to avail himself thereof does not reject them in the part unfavorable to him.

ART. 1764. A note written or signed by the creditor at the foot of, in the margin or on the back of an instrument which has always been in his possession, is proof in all that is favorable to the debtor.

The same applies to a note written or signed by the creditor, at the foot of, in the margin or on the back of the duplicate of an instrument, if said duplicate be in the possession of the debtor.

But a debtor desiring to avail himself of the portion of the memorandum favorable to him, must also accept that portion which is unfavorable to him.

ART. 1765. A public or private instrument is proof between the parties even of what is there expressed in enunciative terms, provided that the enunciation have a direct reference to the dispositive portion of the act or contract.

ART. 1766. Private instruments, made by the contracting parties for the purpose of altering the agreements contained in a public instrument, shall not produce any effect against third persons.

Nor shall any such effect be produced by counter-instruments, when their contents shall not have been noted in the margin of the original

instrument, whose provisions are altered in the counter-instrument, and of the copy by virtue of which the third person has acted.

1779.

ART. 1767. The evidence of witnesses shall not be admissible as to an obligation which should have been reduced to writing.*

2242.

ART. 1768. Presumptions are legal or judicial.

Legal presumptions are governed by article 66.

Those deduced by the Judge must be weighty, precise and consistent.

ART. 1769. The confession made in court either personally or through an attorney-in-fact, with regard to a personal act of the same party, is full proof against him, and no proof shall be admissible against such party, excepting in case it be duly proved that the party making it was laboring under an error of fact, or that he was not in the full enjoyment of his senses at the time of making it.

202, 1120, 1191, 1795 pars. 2 and 3, 1934, 2046, 2505, 1510, 1511.

89 of law 153 of 1887, which article repeals art. 1611 of the Civil Code.

ART. 1770. The provisions of the Judicial Code shall be observed with regard to the oath deferred by the Judge or Prefect or by one of the parties to the other, and with regard to the personal inspection of the Judge or Prefect.

* See in law 153 of 1887, articles 91 to 93, which supplement this Title.

TITLE XXII.

Of Marriage Agreements and the Conjugal Partnership.

CHAPTER I.

General Rules.

ART. 1771. Under the name, of *marriage agreements* are known the contracts celebrated by the spouses before contracting marriage, regarding the property they bring thereto, and the mutual present or future donations and concessions they may wish to make.

1810 No. 1, 1844.

ART. 1772. Marriage agreements shall be executed by a public instrument; but when the property brought to the marriage by both spouses together does not exceed one thousand pesos in value, and no rights in real property are constituted in the marriage agreements, it shall be sufficient that they be embodied in a private instrument, signed by the parties and by three witnesses domiciled in the Territory.

Otherwise they shall not be valid.

1760, 1769, 1781 No. 4 par. 2, and No. 6, par. 2, 756.

ART. 1773. Marriage agreements shall not contain any stipulations contrary to good morals or to the law. They shall not, therefore, be detrimental to the rights and obligations which are imposed by law upon each spouse with respect to the other or to the common descendants.

15, 198, 1250.

ART. 1774. In the absence of a written agreement, the conjugal partnership shall be considered as entered into in accordance with the provisions of this Title by the mere act of marriage.

ART. 1775. The wife, notwithstanding the conjugal partnership, may renounce her right to the acquets and gains resulting from the administration of her husband, provided that she make this renunciation before the marriage or after the dissolution of the partnership.

What is stated is understood without prejudice to the legal effects of the separation of property and divorce.

1809, 1837, 1840, 1195 pars. 2 and 3, 1823, 198.

ART. 1776. It may be stipulated in the marriage agreement that the wife will administer a part of her own property independently of the

husband; and in such case the rules prescribed in Title IX, Chapter 3, of Book I, shall be followed.

It may also be stipulated that the wife shall freely dispose of a fixed sum of money, or of a fixed periodical allowance, and such agreement shall have the same effects as the partial separation of property; but it shall not be licit for the wife to secure loans or purchase on credit upon said sum or allowance.

212, 1820 No. 3, 1796 last par., 301 par. 2, 192 par. 2.

ART. 1777. A minor able to contract marriage may make in the marriage agreement, with the approval of the person or persons whose consent he may have needed for the marriage, all the stipulations he would be able to make were he of age; excepting those whose purpose is to renounce the acquets and gains, or alienate real property, or encumber the same with mortgages or servitudes. It shall always be necessary that the court authorize the minor for stipulations of this character. He who is under curatorship for another cause than minority, shall require the authority of his curator for the marriage agreements, and shall be subject to the same rules as the minor as to the rest.

An agreement that the conjugal partnership begin before or after contracting marriage cannot be made; any stipulation to the contrary is null.

117, 339, 345, 483 *et seq.*, 1837, 6 par. 2, 1526.

ART. 1778. Marriage agreements shall not be considered as entered into irrevocably, except from the day of the celebration of the marriage; nor after its celebration, can they be amended, even with the consent of all the persons who were parties thereto.

1602.

ART. 1779. Instruments amendatory or supplementary of marriage agreements shall not be admissible in court, unless they shall have been executed before the marriage and with the same formalities as the original agreement.

The additions or changes made therein shall not avail against third persons, even though they shall have been made in due time and with the proper requisites; unless a memorandum or extract of the subsequent instruments be placed in the margin of the protocol of the first instrument.

1766.

ART. 1780. The marriage agreement shall state the property that the spouses bring to the marriage, with its value and a detailed statement of the debts of each.

Omissions or misstatements which may be incurred in this regard, shall not annul the agreement; but the Notary before whom it is drawn, shall inform the parties of the preceding provision and shall mention it in the instrument, under the penalty that the laws may impose upon him for his negligence.

472.

CHAPTER 2.

Of the Assets of the Conjugal Partnership and of its Charges.

ART. 1781. The assets of the conjugal partnership consist:

1. Of the salaries and emoluments of any kind of office and trade, earned during the marriage.
2. Of all the fruits, interest, pensions, income and profit from whatsoever source, whether from the community property, whether from the property belonging to each of the spouses and which are received during the marriage.
3. Of the money which either of the spouses brings to the marriage, or should acquire during the same, the community obligating itself to the restitution of a similar sum.
4. Of the consumable things and specific movables which either of the spouses may bring to the marriage, or may acquire during the same; the community being bound to restore the value thereof according to their value at the time they are brought to the marriage or when acquired.

But the spouses may exempt from the community any part of their specific movables, by designating them in the agreement, or in a list signed by both and by three witnesses domiciled in the Territory.

5. Of all the property which either of the spouses may acquire during the marriage under an onerous title.

6. Of the duly appraised real property which the wife brings to the marriage in order that the partnership may restore its value in money.

This shall be stated in the marriage agreement or in another public instrument drawn at the time of the contribution, the value being designated, and as to the rest the proceedings shall be as in a contract for the sale of real property.

It if be stipulated that the certain thing which the wife contributes, may be restored in money at the option of the said wife or husband, the rules governing alternative obligations shall be observed.

1795, 1809, 2489 last par., 1811, 1758, 1760, 1769, 756, 1772, 1857 par. 2, 1556.

ART. 1782. The acquisitions made by either of the spouses under title of donation, inheritance or legacy, shall be added to the property

of the spouse who is the donee, heir, or legatee; and the acquisitions of both spouses jointly, under any of these titles, shall not increase the community assets, but those of each spouse.

ART. 1783. Notwithstanding the provisions of the preceding article, the following shall not be added to the community assets:

1. An immovable duly subrogated to another immovable the property of either of the spouses.

2. The things purchased with funds belonging to one of the spouses, assigned to the same in the marriage agreement or in a donation by reason of marriage.

3. All the material increase accruing to any specific thing belonging to one of the spouses, forming one body with it, by alluvion, building, planting or any other cause.

1789, 1827 par. 2, 1802.

ART. 1784. The land adjoining a tenement belonging to one of the spouses and acquired by him or her during the marriage, under any title which makes it community property, according to article 1781, shall be understood to belong to the community; unless it and the former tenement shall have formed a tenement or building from which the land latterly acquired cannot be separated without damage; as in such case the community and said spouse shall be co-owners of all in proportion to their respective value at the time of the incorporation.

ART. 1785. The ownership of the things which one of the spouses possessed with other persons *pro indiviso*, and of which he should become the owner during the marriage, under any onerous title, shall belong *pro indiviso* to said spouse and the community, in proportion to the value of the quota which belonged to the former and what the acquisition of the remainder may have cost.

1801.

ART. 1786. The mines denounced by one of the spouses or by both, shall be added to the community assets.

ART. 1787. That part of treasure which, according to the law, belongs to the person finding it, shall be added to the assets of the spouse finding it, and that part of the treasure which belongs to the owner of the land upon which it may be found, shall be added to the assets of the community, if the land belong to the latter, or to the assets of the spouse who may be the owner thereof.

701.

ART. 1788. Things donated or assigned under any other gratuitous title, shall be understood to belong exclusively to the spouse who is

the donee or assign; and whether the donations or other gratuitous acts in favor of one spouse, have been made out of consideration to the other, shall not be considered.

ART. 1789. In order that an immovable may be considered as subrogated to another immovable of one of the spouses, it shall be necessary that the second shall have been changed for the first, or that, the second having been sold during the marriage, the first was bought with its price; and that in the contract of exchange or of purchase and sale, the intention to subrogate be expressed.

An immovable may also be subrogated to effects belonging to one of the spouses which do not consist of real property; but in order that the subrogation may be valid, it shall be necessary that the effects shall have been destined thereto, in accordance with No. 2, of article 1783, and that in the deed of purchase of the immovable the application of said effects and the intention to subrogate shall appear.

1760, 1668, 1797.

ART. 1790. If one estate be subrogated to another, and the sale price of the old estate should exceed the purchase price of the new one, the community shall owe this excess to the spouse making the subrogation; and if, on the contrary, the purchase price of the new estate should exceed the sale price of the old one, the subrogating spouse shall owe this excess to the community.

If upon two estates being exchanged, a balance is received in cash, the community shall owe this balance to the spouse making the subrogation; and if, on the contrary, a balance should be paid, said spouse shall owe it to the community.

The same rule shall be applied in the case of subrogating an immovable for values.

But a subrogation shall not be understood, when the balance in favor or against the community shall exceed one-half the price of the estate which is received, which shall then form part of the community assets, the community being obligated to the spouse for the price of the estate alienated or for the values invested, and the latter preserving the right to carry the subrogation into effect, by purchasing another estate.

1801.

ART. 1791. The subrogation made in property of the wife requires, furthermore, judicial authority after an investigation.

1810, 1811.

ART. 1792. A specific thing acquired during the partnership does not belong to the community even though acquired under an onerous title, when the consideration or title of the acquisition preceded it.

Consequently:

1. The specific things that one of the spouses possessed as owner before the partnership, shall not belong to it, even though the prescription or transaction under which he shall have made them really his own, was completed or effected during the same.

2. Nor the property possessed before the same by a vicious title, but which vice was purged during the same by ratification, or by any other legal remedy.

3. Nor the property returning to one of the spouses by the nullity or resolution of a contract, or by the revocation of a donation.

4. Nor litigious property of which during the partnership one of the spouses has obtained pacific possession.

5. Nor shall the right of usufruct joined with the ownership vested in the same spouse belong to the community; the fruits only shall belong to the community.

6. What is paid to either of the spouses as the principal of credits constituted before the marriage, shall belong to the creditor spouse.

The same shall apply to the interest due one of the spouses before the marriage and paid thereafter.

2489 par. 3.

ART. 1793. The property which should have been acquired by one of the spouses during the partnership, and which in fact is not acquired until after the dissolution of the community, on account of not having had notice thereof or by reason of its acquisition or enjoyment having been unjustly embarrassed, shall be considered as having been acquired during the partnership.

The fruits which without this lack of information, or without this embarrassment should have been received by the partnership, and which after its dissolution shall have been restored to said spouse or to his heirs, shall be considered as belonging to the community.

ART. 1794. Remuneratory donations, made to one or both of the spouses for services which gave no right of action against the person served, do not increase the community assets; but those made for services which would have given a right of action against such person, shall increase the community assets, to the amount which could have been sued for, and not more; unless said services shall have been rendered before the partnership, as in such case no part of said donations shall be adjudicated to the community.

ART. 1795. Every sum of money and amount of consumable (fungible) things, all effects, credits, rights and actions in the hands of either of the spouses at the time of the dissolution of the community, shall be presumed to belong to it, unless the contrary shall appear or be proved.

Nor shall the declaration of one of the spouses who affirms that a thing is his or hers or is due him or her, nor the confession of the other, nor both together, be considered sufficient proof, even though made under oath.

The confession, nevertheless, shall be considered as a revocable donation which, being confirmed by the death of the donor, shall be executed from his share of the acquets and gains or his own property, to the extent necessary.

Nevertheless, his clothing, and all the movables of his necessary personal use, shall be considered as belonging to his wife.

66, 1800, 1801, 202, 1191, 2505, 1196.

ART. 1796. The community is bound for the payment:

1. Of all the pensions and interest running, whether against the partnership, or either of the spouses, which fall due during the partnership.

2. Of the debts and obligations contracted during the marriage by the husband, or by the wife with the authority of the husband, or of the court in substitution, and which shall not be personal of the former or of the latter, as would be those contracted for the establishment of the children of a former marriage.

The partnership, consequently, is bound with the same limitation, for the payment of every surety, mortgage or pledge constituted by the husband.

3. Of all the personal debts of each of the spouses, the debtor being obliged to compensate the community for what the latter may expend therein.

4. Of all the usufructuary charges and repairs of the community property of each spouse.

5. Of the maintenance of the spouses; of the maintenance, education and establishment of the common descendants, and of all other family charges.

As a family charge shall be considered the support which one of the spouses is obliged by law to furnish to his ascendants or descendants, although they be not of both spouses; but the Judge or Prefect may reduce this expense, if it should appear to him to be excessive, imputing the excess to the assets of the spouse.

If the wife reserves to herself the right in the marriage agreement that there be delivered to her in a lump sum or in installments an amount of money of which she may dispose at her will, such payment shall be defrayed by the community, provided that it shall not have been expressly imposed upon the husband in the marriage agreement.

1806 par. 2, 1807, 183, 188, 191, 855, 856, 257, 423, 1776 par. 2.

ART. 1797. If a thing belonging to the husband or to the wife be sold, the community shall owe the price to the spouse making the sale, excepting in so far as said price shall have been applied to the subrogation referred to in article 1789, or to another personal matter of the spouse to whom the thing sold belonged, as in the payment of his personal debts, or in the establishment in business of his descendants from a former marriage.

ART. 1798. The husband or the wife shall owe the community the value of every donation he or she may make from any part of the community assets, unless it be of small value, taking into consideration the extent of the partnership assets, or unless it be made for an object of eminent piety or beneficence and without seriously affecting said assets.

1825, 1840, 1803.

ART. 1799. If the husband or the wife shall dispose *mortis causa*, of a specific thing belonging to the community, the assign of said specific thing may sue the succession of the testator therefor, if the thing, in the division of the acquets and gains, shall have been adjudicated to the heirs of the testator; but otherwise, he shall only have the right to sue the succession of the testator for its price.

1168, 1401.

ART. 1800. The ordinary and extraordinary expenses of the education of a common descendant, and those incurred in setting him up in business or to marry him, shall be imputed to the acquets and gains, unless it shall appear in an authentic manner that the husband, or the wife with the authority of the husband or of the court in substitution, or both jointly, desired that these expenses should be taken from their private property. Even when such expenses are taken immediately from the private property of either of the spouses, it shall be understood to be done for the account of the community, unless a statement to the contrary be made.

In the event of such expenses having been defrayed by the husband, without contradiction or objection on the part of the wife, and it not being evident in an authentic manner that the husband intended to pay them out of his own property, the husband or his heirs may demand that they be reimbursed one-half that part of said expenses not covered by the acquets and gains out of the private property of the wife; and the Judge or Prefect shall in his discretion grant this demand in whole or in part, taking into consideration the amount and obligations of the patrimonies, and the discretion and moderation observed by the husband in the payment of said expenses.

All this is applicable to a case where the descendant has no property of his own; for, should he have any, the extraordinary expenses shall be

imputed to his property, in so far as they can be covered thereby, and in so far as they shall have been actually beneficial to him; unless it shall appear in an authentic manner that the husband, or the wife duly authorized, or both jointly, wished to defray them from their own.

66, 1795, 1758, 1825, 257 last par., 1256.

ART. 1801. In general, the prices, balances, judicial costs and expenses of all kinds incurred in the acquisition or collection of the property, rights or credits belonging to either of the spouses, shall be presumed as incurred by the community, in the absence of proof to the contrary, and must be credited to the same.

Consequently:

The spouse who acquires property under an inheritance, owes reimbursement to the community for all the debts and hereditary or testamentary charges which he may cover, and for all the costs of the acquisition; excepting the amounts which he shall prove to have covered with the said hereditary property or with his own.

66, 1795, 1785, 1790, 1825.

ART. 1802. Reimbursement shall also be due the community for expenses of all kinds which may have been incurred as to the property of either of the spouses, in so far as said expenses shall have increased the value of the property; and to the extent of the existence of this value at the date of the dissolution of the partnership; unless this increase in value shall exceed that of the expenses, as in such case the amount of the latter only shall be due.

1783 par. 3, 965, 966, 855, 856, 1825.

ART. 1803. In general, the community must be reimbursed for every gratuitous and considerable expenditure in favor of a third person who is not a common descendant.

1825, 1798.

ART. 1804. Each spouse owes likewise reimbursement to the community for the damage caused it through fraud or grave fault, and for the payment made by the community of the fines and pecuniary damages to which such spouse may have been sentenced for some offense.

2119, 2326, 1825.

CHAPTER 3.

Of the Ordinary Administration of the Property of the Conjugal Partnership.

ART. 1805. The husband is the head of the conjugal partnership, and as such freely administers the community property and that of his wife; being subject, nevertheless, to the obligations imposed upon him by this title and to those he may have assumed by the marriage agreement.

177, 1637, 180, 193, 1798, 2189 No. 8, 2502 No. 3.

ART. 1806. The husband is, with regard to third persons, the owner of the community property, as if it and his own property formed a single patrimony, so that during the partnership, the creditors of the husband may levy upon the property of the latter as well as upon the community property; without prejudice to the reimbursement or compensation which the husband may owe in consequence thereof to the community, or the community to the husband.

Nevertheless, the creditors may enforce their rights upon the property of the wife by virtue of a contract celebrated by them with the husband, in so far as it be proved that the contract was entered into for the personal benefit of the wife, as for the payment of her debts contracted before the marriage.

180 par. 2, 2489 par. 3, 1834, 206, 191 pars. 2 and 3, 1747, 1796 No. 2, 1833.

ART. 1807. Every debt contracted by the wife under a general or special power of attorney, or with the express or implied authority of the husband, is, with regard to third persons, a debt of the husband, and consequently of the community; and the creditor cannot enforce the payment of this debt against the private property of the wife, but only against the property of the community and against the private property of the husband; without prejudice to the provisions of the second paragraph of the preceding article.

The contracts entered into by the husband and by the wife jointly, or in which the wife binds herself solidarily and subsidiarily with the husband, shall not avail against the private property of the wife, excepting in the cases and terms of the aforesaid second paragraph.

183, 188, 191 par. 2, 192, 195. See citations to preceding article.

ART. 1808. The wife alone has no right whatsoever in the community property during the existence of the partnership. The authority of the

court in substitution produces no other effects than those declared in article 191.

182.

ART. 1809. Even though the wife, in the marriage agreement, shall renounce the acquets and gains, she shall not thereby have the power to receive the fruits of her own property, which shall be understood as granted to the husband to support the charges of the marriage, with the obligation of preserving and restoring said property, as will be stated below.

What has been stated shall be understood without prejudice to the rights of a woman divorced or separate in property.

2489 par. 3, 1781, 1775, 203, 211, No. 5, 162.

ART. 1810. The real property of the wife, which the husband is or may be obliged to restore in kind, cannot be alienated or mortgaged excepting with the consent of the wife and upon a decree of the Judge or of the Prefect, after an investigation into the facts.

The consent of the wife may be supplied by the Judge or Prefect when she is incapacitated from expressing her will.

The causes justifying the alienation and mortgage shall be the following only:

1. Power granted therefor in the marriage agreement.
2. The manifest necessity or utility of the wife.

749, 1771, 1791, 189, 303, 483, 1815.

ART. 1811. In order to alienate other property of the wife, which the husband is or may be obliged to restore in kind, the consent of the wife shall be sufficient, which consent may be supplied by the Judge or Prefect, when the wife is incapable of expressing her will.

483, 1815 par. 2, 188.

ART. 1812. If the wife or her heirs shall prove that a portion of her property has been alienated, mortgaged or pledged without the requisites prescribed in the preceding articles, they may exercise the right of revindication, or demand the restitution of the pledge or cancellation of the mortgage, in the cases in which as a general rule these actions lie.

They shall likewise have the right to recover damages against the property of the husband in the cases in which they cannot or do not desire to exercise these rights against third persons.

Third persons who have been evicted shall have an action of warranty

against the husband, and if the damages be paid with community property, the husband must restore it.

946, 1748, 1815 par. 3.

ART. 1813. The husband cannot give in lease the rural property of the wife for more than eight years, nor her urban property for more than five; and she or her heirs, upon the dissolution of the community, shall be bound to respect the lease contract which may have been entered into for a period of time not exceeding the limits above mentioned.

Nevertheless, the lease may last longer, if the husband and the wife should jointly agree thereto, and the intervention of the wife may be supplied by the Judge or Prefect when she is unable to act.

304, 496, 1817 par. 2, 2027.

CHAPTER 4.

Of the Extraordinary Administration of the Conjugal Partnership.

ART. 1814. A woman who, in the event of the interdiction of her husband, or on account of the long absence of the latter without communicating with his family, may have been appointed the curatrix of her husband, or the curatrix of his property, shall by said act have the administration of the conjugal community.

587 No. 3, 538, 539, 551, 550, 1818.

ART. 1815. The wife having the administration of the partnership, shall administer with the same powers as the husband, and may, furthermore, herself execute the acts for the legality of which the husband requires the consent of the wife; obtaining special authority from the Judge or Prefect in the cases in which the husband would have been required to do so.

But she cannot, without special authority from the court, after an investigation of the reasons, alienate the real property of her husband, nor encumber the same with mortgages or rent charges, nor make subrogations therein, nor accept, unless under the benefit of inventory, an inheritance deferred to her husband.

Any act in contravention of these restrictions, shall be null, and shall make her liable in her property, in the same manner the husband would be in his, for an abuse of his administrative powers.

191, 188, 749, 1810, 1811, 211, 1307 pars. 2 and 3, 1812.

ART. 1816. All the acts and contracts of the administering wife, which she is not forbidden to enter into by the provisions of the preced-

ing article, shall be considered as acts and contracts of the husband, and shall, consequently, bind the community and the husband; excepting in so far as it shall appear or be proved that said acts and contracts involved a personal matter of the wife.

206.

ART. 1817. The administrating wife may give in lease the property of the husband, and the latter or his descendants shall be bound to respect a lease for a period of time not exceeding the limits stated in the first paragraph of article 1813.

This lease, nevertheless, may last longer, if the wife shall have been specially authorized by the court to extend it, after an investigation as to the utility.

ART. 1818. A wife who does not wish to assume the administration of the conjugal partnership, nor submit to the directions of a curator, may demand the separation of property; and in such case the provisions of Chapter 3, Title IX, Book First, shall be observed, the approval of the court being substituted for that of the husband, in the cases in which the latter is required therein.

204 last par., 1814.

ART. 1819. The cause for the extraordinary administration referred to in the preceding articles having ceased, the husband shall recover his administrative powers by a judicial decree.

210.

CHAPTER 5.

Of the Dissolution of the Conjugal Partnership and Division of the Acquets and Gains.

ART. 1820. The conjugal partnership is dissolved:

1. By the dissolution of the marriage.
2. By the presumption of the death of one of the spouses, according to the provisions contained in the Title *Of the beginning and end of persons*.
3. By a decree of perpetual divorce or total separation of property; if the separation be partial, the community shall continue with regard to the property not comprised therein.
4. By the declaration of the nullity of the marriage.

152, 99, 162, 203, 212, 204, 149, 150.

ART. 1821. The partnership having been dissolved, an inventory and appraisal of all the property that it enjoyed the usufruct of or for which it was responsible shall immediately be made, within the term and in the form prescribed for successions *mortis causa*.

1310, 1312.

ART. 1822. The inventory and appraisal which may have been made without judicial formalities, shall have no value in court, except against the spouse, the heirs or the creditors who may have duly approved and signed the same.

If there should be minors among the participants in the acquets and gains, or insane persons or others disqualified to administer their property, a formal inventory and appraisal shall be necessary; and if they should be omitted, the person to whom such omission may be imputable, shall answer for the damages, and said inventory and appraisal shall be legalized as soon as possible in the proper form.

471, 1310, 1312, 1341, 1759.

ART. 1823. A wife who shall not have renounced the acquets and gains before the marriage or after the dissolution of the partnership, shall be understood to accept them with the benefit of inventory.

1775, 66, 1304.

ART. 1824. That of the two spouses or his or her heirs, who fraudulently shall have concealed or removed a thing belonging to the partnership, shall lose his or her portion in the same thing and shall be obliged to restore it doubled.

1288, 1313.

ART. 1825. All that which the spouses may respectively owe to the partnership, by way of restitution or indemnity, according to the rules given heretofore, shall be fictitiously added to the community assets.

1798, 1800.

ART. 1826. Each spouse shall have the right in person or through his or her heirs, to take from the assets the specific things or substances belonging to him or her, and the prices, balances and recompenses which constitute the remainder of his or her assets.

The restitution of the specific things and effects must be made as soon as possible after the termination of the inventory and appraisement; and the payment of the remainder of the assets, within one year from the date of such termination. The Judge or Prefect may, nevertheless,

extend or shorten this period on the petition of the persons interested, after an investigation as to the reasons therefor.

474, 1361.

ART. 1827. The losses or deteriorations occurring in said specific things or effects, must be borne by the owner, unless they be due to the fraud or grave fault of the other spouse, in which case the latter must make compensation therefor.

Nothing shall be due the partnership for increases arising from natural causes and independently of human industry.

1543, 63, 714, *et seq.*

ART. 1828. The fruits hanging at the time of the restitution, and all those gathered after the dissolution of the partnership, shall belong to the owner of the respective specific things.

The fruits received from the community property since the dissolution of the partnership, accrue to the community assets.

714 *et seq.*, 713, 840 par. 2, 1543.

ART. 1829. The wife shall make the deductions referred to in the preceding articles before the husband; and those consisting of money, whether belonging to the wife or the husband, shall be made from the money and movables of the community, and subsidiarily from the immovables of the same.

The wife, if the community property should be insufficient, may make the deductions due her from the private property of the husband, selected by mutual agreement. If there be no agreement, the Judge or Prefect shall select.

ART. 1830. The foregoing deductions having been made, the balance shall be divided by halves between the spouses.

ART. 1831. The testamentary bequests which the deceased spouse may have made in favor of the surviving spouse, shall not be imputed to the half of the acquets and gains of the latter, unless the former shall have expressly so ordered; but in such case the surviving spouse may repudiate them, if he prefers to abide by the result of the partition.

1234, 1235.

ART. 1832. The division of the community property shall be subject to the rules given for the partition of hereditary property.

1016, 1374 *et seq.*

ART. 1833. The wife is not responsible for the debts of the community, beyond the extent of her half of the acquets and gains.

But, in order to enjoy this benefit, she must prove the excess of the contribution required of her, over her half of the acquets and gains, either by the inventory and appraisal, or by other authentic documents.

1238, 1806 par. 2, 1807, 1304, 1758.

ART. 1834. The husband is liable for the total debts of the community; reserving his action against the wife for the recovery of one-half of these debts, according to the preceding article.

1806.

ART. 1835. That of the spouses who, by virtue of a mortgage or pledge constituted upon a specific thing which has fallen to him or her in the division of the community assets, pays a community debt, shall have a right of action against the other spouse for the recovery of one-half the amount paid; and if he or she pay a debt of the other spouse, he or she shall have a right of action against such spouse for the recovery of the entire amount paid.

ART. 1856. The heirs of each spouse enjoy the same rights and are subject to the same actions as the spouse they represent.

1155, 1580, 1411.

CHAPTER 6.

Of the Renunciation of the Acquets and Gains, made on the Part of the Wife, after the Dissolution of the Partnership.

ART. 1837. The community having been dissolved, the wife who is of age or her heirs who are of age, shall have the power to renounce the acquets and gains to which they may be entitled.

This renunciation is not permitted to a wife under age, nor to her heirs under age, without judicial approval.

1775, 1777.

ART. 1838. The wife may make the renunciation as long as no part of the community assets shall have come into her possession as acquets and gains.

The renunciation having been made, it cannot be rescinded, unless it be proved that the wife or her heirs have been induced to renounce by deceit or a justifiable error as to the real state of the affairs of the community.

This rescissory action shall prescribe in four years from the date of the dissolution of the community.

1287, 1299, 1300, 1292, 1291, 1294, 1509, 1750.

ART. 1839. The wife or her heirs having made the renunciation, the rights of the community and of the husband are confounded and identified, even with regard to her.

1806.

ART. 1840. A wife making a renunciation, reserves the rights and obligations as to the reimbursements and indemnities above mentioned.

1798.

ART. 1841. If only a portion of the heirs of the wife renounce, the shares of those renouncing accrue to the share of the husband.

1206.

CHAPTER 7.

*Of the Dowry and of Donations by Reason of Marriage.**

ART. 1842. The donations which one spouse makes to the other before the celebration of the marriage and in consideration thereof, and the donations which a third person makes to either of the spouses before or after the celebration of the marriage, and in consideration thereof, are called in general donations by reason of marriage.

1463, 1782, 1788.

ART. 1843. The promises which one spouse makes to the other before the celebration of the marriage and in consideration thereof, or which a third person makes to one of the spouses in consideration of the marriage, shall be subject to the same rules as present donations, but they must appear in a public instrument, or by the confession of the third person.

1457, 1463, 1760, 1769.

ART. 1844. Neither of the spouses can make a donation to the other by reason of marriage, beyond the value of one-quarter of the property which he brings to the marriage.

1771, 1458, 1463.

ART. 1845. The donations by reason of marriage, whether classified as dowry, *arras*, or under any other denomination, are susceptible of terms, conditions and any other licit stipulations, and are subject to the general rules governing donations, in all that is not opposed to the special provisions contained in this Title.

* See La. Civil Code, arts. 2336 [2316], 2337 [2317] *et seq.*

In all of them the condition of the marriage taking place or having taken place is presumed.

1473, 1485, 66, 112, 150, 1546.

ART. 1846. The nullity of the marriage having been declared, all the donations which may have been made by reason of the said marriage to the person who contracted it in bad faith, may be revoked, provided that evidence of the donation and its consideration appear in a public instrument.

In the instrument of the donating spouse, the consideration of marriage is always presumed, even though not expressed.

The putative spouse who also contracted in bad faith, shall not enjoy this right of action for revocation.

112, 164, 1488, 1463, 1548, 1760, 66, 1546, 150, 1473, 1485.

ART. 1847. In donations *inter vivos* or testamentary assignments by reason of marriage, there shall not be understood the resolutive condition of the absence of the donee or assign without leaving succession, nor any other condition which is not expressed in the respective instrument, or which the law does not prescribe.

1457, 1760.

ART. 1848. If by the act of one of the spouses the marriage should be dissolved before being consummated, the donations which may have been made to such spouse by reason of marriage may be revoked according to the terms of article 1846.

The spouse by whose act the marriage may be dissolved, shall not have this right of action for revocation.

164.

TITLE XXIII.

Of Purchase and Sale.

ART. 1849. A *purchase and sale* is a contract in which one of the parties binds himself to give a thing and the other to pay for it in money. The former is said to *sell* and the latter to *purchase*. The money which the purchaser gives for the thing sold is called the *price*.

2053.

ART. 1850. When the price consists part in money and part in something else, it shall be considered an exchange if the thing is worth more than the money; and a sale otherwise.

1955, 1958.

CHAPTER I.

Of Capacity for the Contract of Sale.

ART. 1851. All persons that the law does not declare incapable of celebrating a contract of sale or any contract whatsoever, are capable of celebrating it.

1504.

ART. 1852. A contract of sale between spouses not divorced, and between a father and son of a family, is null.

1196, 162, 288 par. 2. 53 par. 3 of law 153 of 1887.

ART. 1853. The administrators of public establishments are forbidden to sell any part of the property they administer, the alienation of which is not comprised in their ordinary administrative powers; excepting in a case of express authorization from the competent authority.

640.

ART. 1854. A public employee is forbidden to purchase the public or private property which is sold through his intervention; and Justices of the Supreme Court, Judges, Prefects and the Secretaries of any of them, are forbidden to purchase property in the litigation over which they may have taken part, and which is sold as a consequence of the litigation, even though the sale be made at public auction.

From this provision is excepted the employee with coercive jurisdiction who, taking cognizance of an execution and having, consequently,

the double character of Judge or of Prefect and creditor, should make bids for the things offered at auction, in his character of creditor, which circumstance must be clearly expressed.

1969, 2170, 2171.

ART. 1855. It is not licit for tutors or curators to purchase any part whatsoever of the property of their wards, excepting in accordance with the provisions contained in the Title *Of the Administration of Tutors and Curators*.

501.

ART. 1856. Agents, syndics in insolvency proceedings, and executors, are subject with regard to the purchase and sale of the things passing through their hands by virtue of these offices, to the provisions contained in article 2170.

1351.

CHAPTER 2.

Form and Requisites of a Contract of Sale.

ART. 1857. The sale is deemed perfect from the time the parties thereto have agreed on the things and the price, with the following exceptions:

The sale of real property and servitudes and that of a hereditary succession, shall not be considered perfect before the law, until they shall have been embodied in a public instrument.

The hanging fruits and flowers, trees the wood of which is sold, the material of a building about to be torn down, substances which naturally adhere to the soil, such as stones and mineral substances of all kinds, are not subject to this exception.

750, 1956, 1967, 749, 1457, 1760, 659.

ART. 1858. If the contracting parties should stipulate that the sale of other things than those enumerated in the second paragraph of the preceding article, should not be considered perfect until the execution of a public or private instrument, either of the parties may retract before the execution of the instrument or before the delivery of the thing sold, shall have begun.

1979, 1602.

ART. 1859. If a thing be sold with an earnest, that is, by giving something as a pledge for the celebration or execution of the contract, it shall be understood that either of the contracting parties may retract: he

who has given the earnest by losing the same, and he who received it, by restoring it doubled.

66.

ART. 1860. If the contracting parties shall not have fixed a term within which they may retract, losing the earnest, the retraction cannot take place after the two months next following the agreement, nor after the execution of the public instrument or the beginning of the delivery.

ART. 1861. If earnest be given expressly as *part of the price*, or as an indication that the contracting parties have agreed, the sale shall be perfect, without prejudice to the provisions of article 1857, paragraph 2.

If none of these statements should appear in writing, it shall be presumed of right that the contracting parties reserve the power to retract according to the two preceding articles.

66 par. 4.

ART. 1862. The cost of the bill of sale shall be divided between the vendor and the buyer, unless the contracting parties shall agree otherwise.

1881, 2625 to 2628, 2672.

ART. 1863. The sale may be pure and simple, or under a suspensive or resolutory condition.

It may be made subject to time for the delivery of the things or of the price.

Its object may be two or more alternative things.

Under all these respects it is governed by the general rules of contracts, in so far as not modified by those of this Title.

CHAPTER 3.

Of the Price.

ART. 1864. The price of the sale must be determined by the contracting parties.

This determination may be made by any means or indications which fix it.

If fungible things are involved and are sold at the market price, the price of the day of delivery shall be understood, unless otherwise stipulated.

1850, 1518 par. 2, 1883 pars. 3 and 4, 1929, 2054.

ART. 1865. The price may likewise be left to the decision of a third person; and if the third person should not determine it, any other per-

son agreed upon by the contracting parties may do so for him: in the event of a disagreement, there shall be no sale.

The price cannot be left to the decision of one of the contracting parties.

2055, 1526, 1535, 2093 par. 1.

CHAPTER 4.

Of the Thing Sold.

ART. 1866. All corporeal or incorporeal things, the alienation of which is not forbidden by law, may be sold.

1520, 1518.

ART. 1867. A sale of all present or future property, or of both, whether the total or a part be sold, is null; but the sale of all the specific or generic things and amounts designated by a public instrument shall be valid, even though it extend to all that the vendor possesses or expects to acquire, provided that it does not comprise illicit objects.

The things not comprised in this designation, shall be understood as not included in the sale; any stipulation to the contrary is null.

1464, 1465, 1466, 2082, 66 par. 4, 6 par. 2, 15.

ART. 1868. If the thing be owned in common by two or more persons *pro indiviso*, between whom there is no partnership contract, each of them may sell his share, even without the consent of the other.

2114, 1401, 2442.

ART. 1869. The sale of things which do not exist, but are expected to exist, shall be understood as made under the condition of their existing, unless the contrary shall be stated or unless from the nature of the contract it shall appear that the chance was purchased.

1967, 1969, 1498, 2464.

ART. 1870. The sale of a thing which was supposed to exist and did not exist at the time of the perfection of the contract, does not produce any effect whatsoever.

If a considerable portion thereof were lacking at the time of the perfection of the contract, the purchaser may, at his option, withdraw from the contract, or consider it as subsisting, upon paying the price according to a fair estimate.

He who knowingly sold something that did not exist in whole or in a considerable part, shall reimburse a purchaser in good faith for any damages.

1965, 1884, 2475, 1613.

ART. 1871. The sale of a thing belonging to another is valid, without prejudice to the rights of the owner of the thing sold, as long as they are not extinguished by the lapse of time.

791, 752, 1401 par. 2, 1633, 2320, 1874.

ART. 1872. The purchase of one's own thing is not valid; the purchaser shall have the right to recover what he may have given therefor.

The natural fruits, hanging at the time of the sale, and all fruits, both natural and civil, which the thing may produce thereafter, shall belong to the purchaser, unless the delivery of the thing after a certain period or in the event of a certain condition, should have been stipulated; as in such case the fruits shall not belong to the purchaser, until after the expiration of the period, or the fulfillment of the condition.

All that has been stated in this article, may be modified by express stipulations of the contracting parties.

2313, 714 *et seq.*, 1602.

CHAPTER 5.

Of the Immediate Effects of a Contract of Sale.

ART. 1873. If a person sells separately the same thing to two persons, the purchaser who may have entered in possession shall be preferred to the other; if he has made the delivery to the two, the person to whom first made shall be preferred; and if it has not been delivered to either, the oldest title shall prevail.

740, 754, 756, 2499 par. 3.

ART. 1874. The sale of a thing belonging to another, subsequently ratified by the owner, confers upon the purchaser the rights of such from the date of the sale.

767, 955, 742, 756, 2437, 1871.

ART. 1875. If a thing belonging to another shall have been sold and delivered, and the vendor subsequently acquires the ownership thereof, the purchaser shall be considered as the true owner from the date of the tradition.

Consequently, if the vendor should sell it to another person after having acquired the ownership, the ownership thereof shall subsist in the first purchaser.

See citations to preceding article.

ART. 1876. The loss, deterioration or improvement of the specific thing or certain object sold, is the purchaser's from the moment the contract is perfected, even though the thing shall not have been delivered; unless it be sold under a suspensive condition and the condition be fulfilled, as then, if the thing is totally destroyed while the condition is pending, the loss shall be that of the vendor, and the improvement or deterioration shall be the purchaser's.

1543, 1607, 1729 *et seq.*, 2057.

ART. 1877. If a thing be sold which is customarily sold by weight, by tale or by measure, but indicated in such manner that it cannot be confounded with another portion of the same thing, as all the wheat contained in a certain granary, the loss, deterioration or improvement shall be at the risk of the purchaser, even though said thing should not have been weighed, counted nor measured, provided the price shall have been fixed.

If of things customarily sold by weight, by tale, or by measure, only an indeterminate portion is sold, as ten hectoliters of the wheat contained in a certain granary, the loss, deterioration or improvement, shall not be the purchaser's, until after the price shall have been fixed and said part weighed, counted or measured.

754, 1729 *et seq.*

ART. 1878. If the vendor and the purchaser having agreed as to the price, should fix a day for the weighing, counting or measuring, and one or the other should not appear thereon, such person shall be obliged to compensate the other for all damages resulting from his neglect; and the vendor or purchaser who did not fail to keep the engagement, may, if it suit him, withdraw from the contract.

1546.

ART. 1879. If it be stipulated that the sale is subject to trial, there shall be understood to be no contract as long as the purchaser does not declare that he is satisfied with the thing in question, and any loss, deterioration or improvement shall be the vendor's in the meantime.

A sale shall be understood as made subject to trial with regard to all things customarily sold in this manner, without the necessity of an express stipulation.

CHAPTER 6.

Of the Obligations of the Vendor and Especially of the Obligation to Deliver.

ART. 1880. The obligations of the vendor are reduced in general to two, the delivery or tradition, and the warranty of the thing sold.

The traditions shall be subject to the rules given in Title VI of Book II.

1605.

ART. 1881. The vendor shall naturally bear the cost of making the thing ready for delivery, and the purchaser that incurred for its transportation after the delivery.

1862, 1982.

ART. 1882. The vendor is obliged to deliver the thing sold immediately after the contract, or at the time fixed therein.

If the vendor, through his own act or fault, should have delayed the delivery, the purchaser may, at his option, persevere in the contract, or withdraw therefrom, and in either case he shall be entitled to damages according to the general rules.

All of which is understood if the purchaser has paid the price or is ready to pay the full price or has agreed to pay at a future date.

But if after the contract the fortune of the purchaser should have diminished considerably, so that the vendor is in imminent danger of losing the price, the delivery cannot be demanded even though a term for the payment of the price shall have been stipulated, unless the price be paid or the payment secured.

1864, 1929, 1608, 1609, 1610, 1546 par. 2, 1983, 2059, 1613, 1553, 2374 No. 2, 1929 par. 2.

ART. 1883. If the purchaser is in default in receiving, he shall pay the vendor the storage charges, or the rental of the granaries or vessels containing the things sold, and the vendor shall be relieved from ordinary care to preserve the thing, and shall only be liable for fraud or grave fault.

63.

ART. 1884. The vendor is obliged to deliver what the contract recites.

1605, 1870.

ART. 1885. The sale of a cow, mare or other female, naturally includes that of the issue which she carries in the womb or which she suckles; but not of that which can graze and feed itself.

ART. 1886. In the sale of an estate are naturally included all the accessories which, according to articles 658 *et seq.* are considered immovables.

ART. 1887. A rural estate may be sold with relation to its area, or as a specific or certain thing.

It is sold with relation to its area, whenever such area is stated in any manner in the contract, unless the parties shall declare that there shall be no difference in the price, even though the actual area be greater or less than the area stated in the contract.

It is indifferent whether a total price be fixed directly or the price be deduced from the area or number of measures expressed, and from the price of each measure.

It is also indifferent whether a total area be expressed or the areas of the various portions of different qualities and prices which the estate may contain, provided that the total price and the total area appear from this data.

The same applies to the alienation of two or more estates by one sale. In all other cases the estate or estates shall be understood sold as a determinate object.

2036, 66.

ART. 1888. If the estate be sold with relation to its area, and the actual area be greater than the area declared, the purchaser must increase the price in proportion; unless the price of the overplus area exceeds one-tenth the price of the actual area; as in such case the purchaser may, at his option, either increase the price in proportion, or recede from the contract; and if he recede, he shall be entitled to damages according to the general rules.

And if the real area be less than the declared area, the vendor must supplement it; and if this should not be possible or not demanded of him, he must suffer a proportionate reduction in the price; but if the price of the area lacking exceeds one-tenth of the price of the full area, the purchaser may, at his option, accept the reduction in price, or recede from the contract according to the terms of the preceding paragraph.

2036, 1613, 1615.

ART. 1889. If the estate be sold as a determinate object, neither the purchaser nor the vendor shall have any right to demand a reduction or increase of the price, whatever be the area of the estate.

Nevertheless, if it be sold with an indication of the boundaries, the vendor shall be obliged to deliver all that is comprised between the same, and if he should not be able to do so or it should not be required of him, the provisions of the paragraph of the preceding article shall be observed.

2036.

ART. 1890. The actions granted in the two preceding articles expire at the end of one year counted from the date of delivery.

ART. 1891. The rules given in the articles referred to, apply to any lot of effects or merchandise.

ART. 1892. In addition to the actions granted in the said articles, the contracting parties have one for lesion beyond moiety in a proper case.

1946.

CHAPTER 7.

*Of the Obligation of Warranty and Primarily of Warranty in Case of Eviction.**

ART. 1893. The obligation of warranty comprises two objects: to protect the purchaser in the ownership and pacific possession of the thing sold, and answer for the concealed defects of the latter, called *redhibitory* vices.

1479, 1480, 2111, 1982 No. 2.

ART. 1894. There is eviction of anything purchased when the purchaser is deprived of all or of a part thereof, by a judicial decision.

ART. 1895. The vendor is obliged to warrant the purchaser against any eviction for a cause prior to the sale, unless the contrary shall have been stipulated.

957 last par., 1403 Nos. 2 and 3, 1909.

ART. 1896. The action of warranty is indivisible. It may, therefore, be brought *in solidum* against any of the heirs of the vendor. But when the obligation to protect the purchaser in possession, is followed by that of indemnifying him in money, the action is divided; and each heir is liable only in proportion to his hereditary quota. The same rule applies to vendors who have alienated the thing by one bill of sale.

1581, 1584, 1585, 1568 par. 2, 1587, 1590, 1411.

ART. 1897. A person who is sued for a thing purchased, may bring against the third person from whom his vendor may have acquired it, the action of warranty which the vendor would have against said person, if the vendor had remained in possession of the thing.

ART. 1898. Any agreement exonerating the vendor from warranty in case of eviction is null, if there has been bad faith on his part in said agreement.

1403 No. 2, 1909, 1916.

* See La. Civil Code, arts. 2500 [2476] *et seq.*

ART. 1899. The purchaser who is sued for the thing sold for a cause prior to the sale, must summon the vendor to appear to defend him.

This summons shall be made within the term fixed by the laws of procedure.

If the purchaser should omit to summon him, and the eviction as to the thing should take place, the vendor shall not be obligated to the warranty; and if the vendor cited should not appear to defend the thing sold, he shall be liable for the eviction; unless the purchaser shall have failed to make any defense or oppose any exception himself, and the eviction should have taken place on this account.

1893.

ART. 1990. The provisions of the preceding and following articles, apply also to a purchaser who, in order to protect the thing purchased against execution or insolvency proceedings against a third person, or to recover possession of the thing itself, when he shall have lost it without his fault, is obliged to appear as plaintiff in the respective suit.

1893.

ART. 1901. If the vendor shall appear, the suit shall be continued against him only; but the purchaser may always intervene in the suit for the preservation of his rights.

ART. 1902. If the vendor shall not institute any defense, and agrees to the warranty, the purchaser may, nevertheless, himself conduct the defense; and if he be defeated, he shall not have the right to demand of the vendor the reimbursement of the costs of the defense, nor that of the fruits received during said defense and given to the owner.

ART. 1903. The obligation to warrant shall cease in the following cases:

1. If the purchaser and the person suing for the thing as his own submit to the judgment of arbitrators, without the consent of the vendor, and the arbitrators shall decide against the purchaser.

2. If the purchaser shall have lost the possession through his fault, giving rise to the eviction.

957 last par., 1912.

ART. 1904. Warranty against eviction, which the vendor is obliged to give, comprises:

1. The restitution of the price, even though the thing should be less valuable at the time of the eviction.

2. That of the legal costs of the bill of sale which may have been paid by the purchaser.

3. That of the value of the fruits which the purchaser may have been obliged to restore to the owner; without prejudice to the provisions of article 1902.

4. That of the costs which the purchaser may have defrayed as a consequence of the suit and as the effect thereof, without prejudice to the provisions of the said article.

5. The increase in value which the thing the subject of the eviction may have received in the possession of the purchaser, even through natural causes, or by the mere lapse of time.

All with the following limitations:

ART. 1905. If the lower value of the thing should be due to deterioration from which the purchaser may have profited, the proper discount shall be made in the restitution of the price.

ART. 1906. The vendor shall be obliged to reimburse the purchaser for the increased value arising from the necessary or useful improvements made by the purchaser, excepting in so far as the person who obtained the eviction may have been adjudged to pay the same.

A vendor in bad faith shall be obliged to reimburse even the value of the improvements of luxury.

ART. 1907. The increase in value due to natural causes or to time, shall not be allowed in so far as it exceeds one-fourth the sale price; unless bad faith on the part of the vendor be proved, in which case he shall be obliged to pay the entire increase in value, to whatsoever cause it may be due.

ART. 1908. In forced sales, made by the authority of the court, the vendor is not bound, by reason of the eviction which the thing sold may suffer, but to restore the price which the sale may have brought.

1922, 1924.

ART. 1909. A stipulation exempting the vendor from the obligation of warranty in case of eviction, does not exempt him from the obligation of returning the price received.

And he shall be obliged to return the full price, even though the thing may have deteriorated or its value diminished in any manner whatsoever, even through any act or the negligence of the purchaser, excepting in so far as the latter may have profited from the deterioration.

The obligation to return the price shall cease if he who purchased it did so knowing that the thing belonged to another, or if he expressly assumed the danger of the eviction and so stated.

If the eviction does not involve the entire thing sold, and the part subject to the eviction is such that it is to be presumed that the thing would not have been purchased without it, the rescission of the sale may be demanded.

1403 No. 2, 1492, 1992, 1921.

ART. 1910. By virtue of this rescission, the purchaser shall be obliged to restore to the vendor the part not subject to the eviction, and in this

restitution he shall be considered as a possessor in good faith, unless there be proof to the contrary; and the vendor, in addition to returning the price, shall pay the value of the fruits which the purchaser may have been obliged to restore with the part subject to the eviction, and all other damage which the purchaser may have suffered through the eviction.

ART. 1911. In the event that the part subject to the eviction should not be of so much importance, or in case the rescission of the sale be not demanded, the purchaser shall have the right to demand the warranty of the partial eviction, in accordance with articles 1904 *et seq.*

ART. 1912. If the judicial decision should deny the eviction, the vendor shall not be liable for the damages which the suit may have caused the purchaser, except in so far as the suit may be imputable to the act or fault of the vendor.

ART. 1913. The action of warranty for eviction, prescribes in four years; but in so far as the mere restitution of the price is concerned, it prescribes according to the general rules.

The time shall be counted from the date of the judgment of eviction; or if it should not have been rendered, from the time of the restitution of the thing.

1402 par. 2, 1750, 2536.

CHAPTER 8.

*Of the Warranty Against Redhibitory Vices.**

ART. 1914. A *redhibitory* action is that which the purchaser has for the rescission of the sale or a proportionate reduction in the price on account of the hidden vices of the thing sold, whether real or personal, called *redhibitory vices*.

ART. 1915. Redhibitory vices are those embodying the following conditions:

1. That they existed at the time of the sale.
2. That they are such, that on account of them the thing sold does not serve for its natural use, or only imperfectly, so that it is to be presumed that if they had been known to the purchaser he would not have purchased it or would have purchased it at a much lower price.
3. That the vendor did not call attention to them, and that they are of such character that the purchaser could have ignored them without grave negligence on his part, or such that the purchaser could not have discovered them easily by reason of his profession or trade.

ART. 1916. If it shall have been stipulated that the vendor should not be obligated to warranty for the hidden vices of the thing, he shall

* See La Civil Code, arts. 2520 [2496] *et seq.*

nevertheless be obliged to warrant such as he may have had knowledge of and of which he did not inform the purchaser.

1898, 1924.

ART. 1917. The redhibitory vices give the purchaser a right to demand either the rescission of the sale, or a reduction in the price, as he may see fit.

1546.

ART. 1918. If the vendor knew of the vices and did not declare them, or if the vices were such that the vendor should have known them by reason of his profession or trade, he shall be bound not only to make restitution or reduce the price, but also to pay the damages; but if the vendor was not aware of the vice, nor were they such that he should have known them by reason of his profession or trade, he shall only be bound to make restitution or reduce the price.

1986 par. 3, 1988 pars. 4 and 5, 1991 par. 2, 2033 par 2.

ART. 1919. If the vicious thing shall have been destroyed before the contract of sale shall have been perfected, the purchaser shall not thereby lose the right he may have had for a reduction in the price, even though the thing shall have been destroyed while in his power and through his fault.

But if it shall have perished through an effect of the vice inherent therein, the rules of the preceding article shall be observed.

1951.

ART. 1920. The parties may by the contract make vices redhibitory which naturally are not.

1602.

ART. 1921. If two or more things should be sold together, whether a lump sum for all of them or a price for each shall have been arranged, the redhibitory action shall only lie as to the vicious thing and not as to all; unless it shall appear that all would not have been bought without this thing; as when a yoke, team or pair of animals is bought, or a suite of furniture.

1909 par. 4, 1990 par. 2.

ART. 1922. A redhibitory action does not lie in forced sales made with the authority of the court. But if the vendor, when he should not or could not ignore the vices of the thing sold, shall not have declared them

at the request of the purchaser, a redhibitory action and the recovery of damages shall lie.

1908, 1949.

ART. 1923. The redhibitory action shall last six months with regard to movables and one year with regard to real property, in all cases in which special laws or the stipulations of the contracting parties shall not have extended or reduced this term. The time shall be counted from the actual delivery.

ART. 1924. The redhibitory action having prescribed, the purchaser shall still retain his right to demand the reduction of the price and indemnity for damages, according to the preceding rules.

1908.

ART. 1925. If the hidden vices are not of the importance mentioned in No. 2 of article 1915, the purchaser shall not be entitled to a rescission of the sale, but only to a reduction of the price.

ART. 1926. The action to demand the reduction in price, whether in the case of article 1915 or in that of article 1925, prescribes in one year for movable property and in eighteen months for real property.

ART. 1927. If the purchase has been made to forward the thing to a distant place, the action for the reduction of the price shall prescribe in one year counted from the delivery to the consignee, in addition to the term of summons corresponding to the distance.

But it shall be necessary that the purchaser, in the time intervening between the sale and the remittance, could have ignored the vice of the thing, without negligence on his part.

CHAPTER 9.

Of the Obligations of the Buyer.

ART. 1928. The principle obligation of the purchaser is to pay the price agreed.

1883.

ART. 1929. The price must be paid in the place and at the time stipulated, or in the place and at the time of delivery, should there be no agreement to the contrary.

Nevertheless, if the purchaser should be disturbed in the possession of the thing, or shall prove that there exists a real action against the same of which the vendor did not notify him before consummating the con-

tract, he may deposit the price with the authority of the court, and the deposit shall last until the vendor shall cause the disturbance to cease or gives surety for the results of the action.

1864, 1882.

ART. 1930. If the purchaser should be in default in paying the price at the said place and time, the vendor shall have the right to demand the price or the resolution of the sale, with recovery of damages.

1546, 1935, 1936, 1617.

ART. 1931. A clause not to transfer ownership except by virtue of the payment of the price, shall produce no other effect than that of the alternative demand mentioned in the preceding article; and upon the purchaser paying the price, the alienations he may have made of the thing, or the rights which he may have constituted thereon in the intermediate period, shall subsist in every case.

1546 par. 2, 2022, 1556, 750, 752, 1937.

ART. 1932. The resolution of the sale for the non-payment of the price, shall entitle the vendor to retain the earnest money, or demand it doubled, and in addition the restoration of the fruits, either in whole, if no part of the price shall have been paid him, or in the proportion corresponding to the part of the price which may not have been paid.

The purchaser, on the other hand, shall be entitled to restitution of the part of the price he may have paid.

For the allowance of the expenses to the purchaser, and the deteriorations to the vendor, the former shall be considered as a possessor in bad faith, unless he shall prove that he has suffered a pecuniary loss, and, without fault on his part, so great a reduction in his means that it has become impossible for him to carry out his agreement.

66, 1768, 63, 1604.

ART. 1933. The resolution for the non-payment of the price, does not give the vendor any right against third possessors, except in accordance with articles 1547 and 1548.

750, 1935, 1940.

ART. 1934. If the bill of sale should state that the price has been paid, no proof whatsoever thereagainst shall be admitted, excepting the nullity or falsification of the instrument, and only by virtue of this proof shall any right of action against third possessions lie.

1769 and citations to preceding article.

CHAPTER 10.

*Of the Agreement of Avoidance.**(Pacto Comisorio.)*

ART. 1935. By the *agreement of avoidance* it is expressly stipulated that, if the price should not be paid at the time settled, the sale contract shall be resolved.

This stipulation shall always be understood in a contract of sale, and when expressed, takes the name of an agreement of avoidance (*pacto comisorio*), and produces the following effects.

1546, 1933, 750.

ART. 1936. The vendor is not deprived by the agreement of avoidance of the option of actions granted him by article 1930.

ART. 1937. If it be stipulated that by the non-payment of the price at the time agreed upon, the contract of sale is resolved *ipso facto*, the purchaser may, nevertheless, cause it to subsist, upon paying the price not later than twenty-four hours after the judicial notice of the suit.

1931.

ART. 1938. The agreement for avoidance prescribes at the time fixed by the parties if it should not exceed four years, counted from the date of the contract.

After the expiration of these four years, it necessarily prescribes whether a longer term or no term at all shall have been stipulated.

1943.

CHAPTER 11.

*Of the Agreement of Redemption.**

ART. 1939. By the *agreement of redemption* the vendor reserves to himself the right to recover the thing sold, returning to the purchaser the determinate sum which may be stipulated, or, in the absence of such stipulation, the purchase price.

ART. 1940. The agreement of redemption, in its effects against third persons, is subject to the provisions of articles 1547 and 1548.

1933, 1944 par. 2.

ART. 1941. The vendor shall be entitled to the return by the purchaser of the thing sold with its natural accessions.

* See I.a. Civil Code, arts. 2567 [2545] to 2588 [2566].

He shall likewise, be entitled to indemnity for the deterioration chargeable to the act or fault of the purchaser.

He shall be bound for the payment of the necessary expenses, but not those invested in useful or luxurious improvements which may have been made without his consent.

1876, 713 *et seq.*, 965 *et seq.*

ART. 1942. The right arising from the agreement of redemption, cannot be ceded.

ART. 1943. The time within which an action for redemption may be instituted, shall not exceed four years from the date of the contract.

But in any case the purchaser shall have the right to be given notice in advance, which shall not be less than six months for real property, nor fifteen days for movables; and if the thing be a fructiferous one and should not give fruits except from time to time and as a result of preparatory work and expenditures, the restitution sued for cannot be enforced before the next harvest of fruits.

1939 par. 2.

CHAPTER 12.

Of Other Agreements Accessory to the Contract of Sale.

ART. 1944. If it should be agreed that upon the appearance within a certain time (which cannot exceed one year) of a person who betters the purchase, the contract shall be resolved, the agreement shall be carried out; unless the purchaser, or the person to whom the latter may have alienated the thing, is willing to better the purchase in the same terms.

The provisions of article 1940 apply to this contract.

The contract having been resolved, the mutual prestations shall take place as in the case of an agreement of redemption.

ART. 1945. Any other licit accessory agreements, which shall be governed by the general rules on contracts, may be added to the contract of sale.

CHAPTER 13.

Of the Rescission of the Sale on Account of Lesion Beyond Moiety.

ART. 1946. A contract of purchase and sale may be rescinded on account of a lesion beyond moiety (*por lesión enorme.*)

1892.

ART. 1947. The vendor suffers a lesion beyond moiety when the price he receives is less than one-half the just price of the thing he sells; and

the purchaser in his turn suffers such lesion, when the just price of the thing he buys is less than one-half the price he pays therefor.

The just price refers to the time of the contract.

1291 par. 3, 1405 par. 2, 1601, 2231.

ART. 1948. The purchaser against whom the rescission has been declared may, at his option, consent thereto, or make up the just price with a deduction of one-tenth; and the vendor, in the same case, may at his option consent to the rescission, or restore the excess of the price received over the just price with an additional tenth part thereof.

No interest or fruits shall be due except from the date of the suit, nor can anything be demanded by reason of the expenditures which the contract may have occasioned.

1545, 1746, 964 par. 3.

ART. 1949. A rescissory action shall not lie for a lesion beyond moiety in sales taking place at a public auction.*

1922.

ART. 1950. If it should be stipulated that a rescissory action cannot be brought, the stipulation shall not be valid; and if the vendor should express the intention of donating the excess, the clause shall be considered as unwritten.

6 par. 2, 15, 1526, 1522.

ART. 1951. If the thing should be lost while in the possession of the purchaser, neither party shall be entitled to the rescission of the contract.

The same shall be the case if the purchaser shall have alienated the thing; unless he shall have sold it for more than he paid for it, as in such case the first vendor may claim this excess, but only to the extent of the just value of the thing with a deduction of one-tenth.

1919, 1748.

ART. 1952. The vendor cannot demand anything by reason of the deterioration which the thing may have suffered, excepting in so far as the purchaser may have profited therefrom.

ART. 1953. The purchaser who is required to return the thing, must first free it of the mortgages or other real rights which he may have constituted thereon.

* This article was repealed by art. 45 of law 57 of 1887, and was replaced by art. 32 of the same law

ART. 1954. The rescissory action for a lesion beyond moiety expires in four years from the date of the contract.

1750, 1938, 1943.

TITLE XXIV.

Of Exchange.

ART. 1955. Exchange is a contract in which the parties mutually obligate themselves to give one specific or determinate thing for another.

1850.

ART. 1956. An exchange is considered perfect by the mere consent, unless one of the things exchanged or both should be real property or rights of hereditary succession, in which case, for the perfection of the contract before the law, a public instrument shall be necessary.

1857.

ART. 1957. Things which cannot be sold cannot be exchanged.

Nor can persons not able to enter into a contract of sale, celebrate a contract of exchange.

1866 *et seq.*, 1851 *et seq.*

ART. 1958. The provisions regarding a purchase and sale apply to an exchange in all that is not opposed to the nature of this contract; each exchanger shall be considered as the vendor of the thing he gives, and the just value thereof at the date of the contract shall be considered as the price which he pays for what he receives in exchange.

TITLE XXV.

Of the Cession of Rights.

CHAPTER I.

Of Personal Credits.

ART. 1959. The cession of a personal credit, under whatsoever title made, shall have no effect between the assignor and the assignee, except by virtue of the delivery of the title.*

1942, 761, 1185 par. 2, 1634 par. 2, 2414, 1669.

ART. 1960. The cession does not produce any effect against the debtor or against third persons, until notice thereof shall have been given by the assignee to the debtor or until it shall have been accepted by the latter.

2414, 1668 No. 5, 1718.

ART. 1961. The notice must be served with the production of the title, which shall bear a note over the signature of the assignor of the transfer of the right with a designation of the assignee.

33 of law 57 of 1887.

ART. 1962. The acceptance shall consist of an act which supposes it, as the answer to the suit of the assignee, a first payment on account to the assignee, etc.

ART. 1963. Should the aforesaid notice or acceptance not take place, the debtor may pay the assignor, or the credit may be attached by creditors of the assignor; and in general, the credit shall be considered as existing in the hands of the assignor with respect to the debtor and third persons.

1718.

ART. 1964. The cession of a credit includes its securities, privileges and mortgages; but it does not transfer the personal exceptions of the assignor.

1670.

ART. 1965. He who cedes a credit under an onerous title, makes himself responsible for its existence at the time of the assignment, that is,

* This article has been supplemented by article 33 of law 57 of 1887.

that it really belonged to him at that time; but he does not make himself responsible for the solvency of the debtor, if he does not expressly bind himself therefor; nor shall it be understood in such case that he makes himself responsible for the future solvency, but only for that of the present, unless the former be expressly included; nor shall the responsibility extend beyond the price or remuneration he may have secured by the assignment, unless expressly otherwise agreed.

1870, 1967.

ART. 1966. The provisions of this title shall not be applied to bills of exchange, notes payable to order, registered bonds, and other negotiable paper which are governed by the Code of Commerce or by special laws.

CHAPTER 2.

Of the Right of Inheritance.

ART. 1967. He who cedes under an onerous title a right of inheritance or a legacy, without specifying the effects of which it consists, makes himself liable only for his quality of heir or legatee.

1857 par. 2, 1869, 1965.

ART. 1968. If the heir should have profited from the fruits, or received credits, or sold hereditary effects, he shall be obliged to reimburse the assignee for their value.

The assignee on his part shall be obliged to indemnify the assignor for the necessary or reasonable expenditures the assignor may have incurred by reason of the inheritance.

The cession of a hereditary quota shall be understood to include the assignment at the same time of the hereditary quotas which by the right of accretion accrue thereto, unless otherwise stipulated.

The same rules shall be applied to the legatee.

66

CHAPTER 3.

Of Litigious Rights.

ART. 1969. A litigious right is ceded when the direct object of the cession is an uncertain event in the litigation, for which the assignor does not make himself responsible.

A right is understood to be litigious, for the purposes of the following articles, from the moment judicial notice of the suit is served.

1521 No. 4, 1854, 1869, 1669.

ART. 1970. It is indifferent whether the cession has taken place as a sale or an exchange, and whether the assignor or the assignee is the one seeking to enforce the right.

1850.

ART. 1971. The debtor shall not be obliged to pay the assignee more than the latter may have given for the right ceded, with interest from the date on which the debtor may have been notified of the cession.

Purely gratuitous cessions are excepted from the provisions of this article; as also those made by the ministry of justice; and those which are comprised in the alienation of a thing of which the litigious right forms a part or accession.

There are excepted also the cessions made:

1. To a co-heir or co-owner, by a co-heir or co-owner, of a right which is common to the two.
2. To a creditor, in payment of what the assignor owes him.
3. To one who enjoys an immovable as *bona fide* possessor, usufructuary or lessee, when the right ceded is necessary for the tranquil and secure enjoyment of the immovable.

1631.

ART. 1972. The debtor cannot oppose to the assignee the benefit granted him by the preceding article, after the expiration of ninety days from the notice of the decree ordering the execution of the judgment.

TITLE XXVI.

Of the Contract of Lease.

ART. 1973. A lease is a contract in which the two parties reciprocally obligate themselves, one to grant the enjoyment of a thing, or to execute a work or render a service, and the other to pay a certain price for this enjoyment, work or service.

786.

CHAPTER I.

Of the Lease of Things.

ART. 1974. All corporeal or incorporeal things which can be used without being consumed, are susceptible of lease; excepting those which the law prohibits the lease of, and strictly personal rights, as those of habitation and use.

Even a thing belonging to another may be leased, and the *bona fide* lessee shall have an action of warranty against the lessor, in the event of eviction.

876, 1677 No. 9, 1871, 1893 *et seq.*

ART. 1975. The price may consist either of money or of the natural fruits of the thing leased; and in the latter case a specific amount may be fixed or a quota of the fruits of each crop.

It is called a *rent* when paid periodically.

2041 par. 2.

ART. 1976. The price may be determined in the same manner as in a contract of sale.

1864 *et seq.*

ART. 1977. In the lease of things, the party which grants their enjoyment is called the *lessor*, and the party which gives the price, the *lessee*.

ART. 1978. The delivery of the thing given in lease may be made under any of the forms of tradition recognized by law.

754.

ART. 1979. If it be agreed that the lease shall not be considered perfect until an instrument shall be signed, either of the parties may with-

draw before this is done or the thing leased is delivered; if earnest money should be given, the same rules shall apply hereto as in a contract of purchase and sale.

1858, 1859 *et seq.*

ART. 1980. If the same thing shall have been separately leased to two persons, the lessee to whom the thing may have been delivered shall be preferred; if it shall have been delivered to both, the subsequent delivery shall not be valid; if to neither, the prior title shall stand.

1873.

ART. 1981. The lease of the property of the Union, or of the public establishments of the latter, shall be subject to the provisions contained in this chapter, excepting the provisions of the Codes or of special laws.

639, 640.

CHAPTER 2.

Of the Obligations of the Lessor in the Lease of Things.

ART. 1982. The lessor is bound:

1. To deliver the thing leased to the lessee.
2. To maintain it in a condition such as to serve for the use for which it is leased.
3. To free the lessee from any disturbance or embarrassment in the enjoyment of the thing leased.

1985, 1893 *et seq.*, 1881.

ART. 1983. If the lessor, through his own act or fault, or through that of his agents or employees, shall have become unable to deliver the thing, the lessee shall have a right to withdraw from the contract, recovering damages.

Such damages shall lie even when the lessor shall have erroneously and in good faith believed himself able to lease the thing; unless this inability should have been known to the lessee, or were due to *force majeure* or a fortuitous event.

1564, 1882 par. 2, 1604, 64.

ART. 1984. If the lessor, through his own act or fault, or that of his agents or employees, is in default in the delivery, the lessee shall be entitled to recover damages.

If the utility of the contract shall, through the delay, be notably diminished for the lessee, whether through the deterioration of the

thing or through the fact of the conditions which were the cause thereof having ceased, the lessee may withdraw from the contract, with a right to recover damages, if the delay were not due to *force majeure* or a fortuitous event.

1608, 1613, 1615.

ART. 1985. The obligation to maintain the thing leased in a good condition, consists in making, during the term of the lease, all the repairs necessary, excepting the *locative* ones, which shall generally be made by the lessee.

The lessor may also be bound for the locative repairs, if the deteriorations which may have made them necessary shall have been due to *force majeure* or to a fortuitous event, or the bad quality of the thing leased.

The stipulations of the contracting parties may modify these obligations.

1998, par. 2, 2028, 2029.

ART. 1986. The lessor, by virtue of his obligation to free the lessee from any disturbance or embarrassment, cannot, without the consent of the lessee, change the form of the thing leased nor make any constructions or works thereon which may embarrass or disturb his enjoyment thereof.

Nevertheless, if repairs are involved which cannot be postponed without grave inconvenience, the lessee shall be obliged to suffer the same, even when they deprive him of the enjoyment of a part of the thing leased; but he shall be entitled to a reduction in the rental or lease price during such time, in proportion to the part involved.

And if these repairs should involve so large a part of the thing, that the remainder should not appear sufficient for the purpose for which it was taken in lease, the lessee may consider the lease terminated. The lessee shall, furthermore, have the right to recover damages, if the repairs should be due to a cause which already existed at the time of the contract and was not then known to the lessee, but was known to the lessor, or was of such a character that the lessor should have had reason to fear it, or should have been aware thereof by reason of his profession.

The same shall be the case when the repairs may interrupt the enjoyment of the thing for a considerable time, in such manner that the lease cannot subsist without grave annoyance or damage to the lessee.

838, 2024, 1918.

ART. 1987. If excepting the cases provided for in the preceding article, the lessee be disturbed in his enjoyment by the lessor or by any

person who may be forbidden to do so by the latter, he shall be entitled to recover damages.

ART. 1988. If the lessee be disturbed in his enjoyment by the encroachment committed by third persons who do not claim a right to the thing leased, the lessee shall in his own name institute proceedings for the repair of the damage.

And if he be disturbed or molested in his enjoyment by third persons who establish some right to the thing leased, and the cause of such right should have been prior to the contract, the lessee may demand a proportionate reduction in the lease price or rent for the time remaining.

And if the lessee, as a consequence of the rights established by a third person, should be deprived of so much of the thing leased as to lead to a presumption that without such part he would not have entered into the contract, he may demand that the lease terminate.

Furthermore, he may demand indemnity for all damage, if the cause of the right established by the third person was or should have been known to the lessor at the time of the contract, but not to the lessee, or if being known to the latter, there was a special stipulation of warranty with respect to the same.

But if the cause of said right was not nor should have been known to the lessor at the time of the contract, the lessor shall not be obliged to pay the ceasing income (*lucro cesante*).

950, 670, 978, 984, 2040, 2342, 2017, 1918.

ART. 1989. The action of third persons claiming a right to the thing leased, shall be brought against the lessor. The lessee shall be obliged only to notify him of the disturbance or annoyance which he may suffer from said third persons, as a consequence of the rights they plead, and if he should omit or delay doing so through his fault, he shall pay the resulting damages to the lessor.

786, 946, 952, 953, 361, 2040.

ART. 1990. The lessee is entitled to the termination of the lease and even to the rescission of the contract, as the case may be, if the bad state or quality of the thing should prevent him from making the use thereof for which it has been leased, whether the lessor was or was not aware of the bad condition or quality of the thing at the time of the contract; and even in the event of the vice of the thing having begun to exist after the contract, but without the fault of the lessee.

If the impediment for the enjoyment of the thing be partial, or if the thing be destroyed in part, the Judge or Prefect shall decide, in view of the circumstances, whether the termination of the lease shall take place, or whether a reduction in the price or rental shall be made.

2033, 1921.

ART. 1991. The lessee shall furthermore, in the case of the preceding article, be entitled to recover the emergent damages, if the vice of the thing were due to a cause prior to the contract.

And if the vice shall have been known to the lessor at the time of the contract, or if it were such that the lessor should have foreseen it in view of the antecedents, or by reason of his profession, the ceasing income shall be included in the damages.

2072, 2217, 1918.

ART. 1992. The lessee shall not be entitled to recover the damages granted him by the preceding article if he entered into the contract with a knowledge of the existence of the vice and the lessor did not bind himself to warrant it; or if the vice were such, that it could not have been ignored without grave negligence on his part; or if he shall have expressly renounced the action of warranty by reason of the said vice, indicating it.

2072, 2217, 1909 par. 3.

ART. 1993. The lessor is obliged to reimburse the lessee for the cost of the indispensable repairs which are not locative, that the lessee may make to the thing leased, provided the lessee shall not have made them necessary through his fault, and that he shall have given notice to the lessor as soon as possible, in order that he might make them for his own account. If the notice could not have been given in time, or if the lessor did not make them in due time, the lessee shall be allowed their reasonable cost, upon the necessity being established.

966, 965.

ART. 1994. The lessor is not obliged to reimburse the cost of the useful improvements, to which he shall not have agreed with the express condition of paying therefor; but the lessee may separate and remove the materials, without injury to the thing leased; unless the lessor shall be disposed to allow him the value of the materials, considering them separated therefrom.

966, 967, 968, 965.

ART. 1995. In all cases in which the lessee shall be entitled to damages he cannot be ejected or deprived of the thing leased, until the amount thereof be paid or secured to him by the lessor.

But this rule does not extend to the involuntary extinction of the right of the lessor to the thing leased.

859, 970, 971, 2000.

CHAPTER 3.

Of the Obligations of the Lessee in the Lease of Things.

ART. 1996. The lessee is obliged to make use of the thing according to the terms or spirit of the contract; and he cannot, consequently, make it serve for other purposes than those agreed, or in the absence of an express agreement, for those to which the thing is naturally destined, or which must be presumed from the circumstances of the contract or the custom of the country.

If the lessee shall violate this rule, the lessor may demand the termination of the lease with indemnity for damages, or confine himself to such indemnity, leaving the lease subsistent.

1603, 2031, 1546.

ART. 1997. The lessee shall employ in the preservation of the thing the care of a good father of a family.

Should he fail in this obligation, he shall answer for the damages; and the lessor shall even have the right to terminate the lease, in the case of a grave deterioration chargeable to the lessee.

63 par. 4, 2037, 2030.

ART. 1998. The lessee is bound to make the locative repairs.

By *locative repairs* are understood those which according to the custom of the country are chargeable to lessees, and in general, the repairs of such deteriorations as are ordinarily produced through the fault of the lessee or his employees, as the damage to walls or fences, sewers or drains, the breaking of window panes, etc.

854, 855, 856, 1985, 857, 2028, 2029.

ART. 1999. The lessee is responsible not only for his own fault, but for those of his family, guests, and employees.

2347.

ART. 2000. The lessee is bound for the payment of the price or rent.

The lessor may, for the security of this payment and the indemnity to which he may be entitled, retain all the existing fruits of the thing leased, and all the objects with which the lessee may have furnished, adorned or provided it, which belong to him; and it shall be presumed that they belong to him, in the absence of proof to the contrary.

1995, 2417, 66, 2495.

ART. 2001. If the thing having been delivered to the lessee, there should be any dispute as to the price or rental, and neither party should produce legal proof as to the agreement in this respect, the appraisal of experts shall be accepted, and the costs of such appraisal shall be borne equally by the lessor and the lessee.

ART. 2002. The payment of the price or rental shall be made at the times stipulated, or, in the absence of a stipulation, in accordance with the customs of the country, and if there be neither a stipulation nor a fixed custom, according to the following rules:

The rental of urban property shall be paid by months, that of rural property, by years.

If a movable thing or live stock be leased for a certain number of years, months, days, each of the periodical payments shall be due immediately after the expiration of the respective year, month, or day.

If a lease be made for a lump sum, the latter shall be due upon the termination of the lease.

2009, 8, 2044, 2043. 13, law 153 of 1887.

ART. 2003. When the lease is terminated through the fault of the lessee, the lessee shall be bound for the payment of damages, and especially for the payment of the rental for the time lacking to the day on which by notice to quit the lease could have been terminated, or to the day upon which the lease would have terminated without notice to quit.

He may, nevertheless, relieve himself from this payment, by proposing, under his liability, a suitable person to substitute him for the time lacking, and giving, for the purpose, a sufficient bond or other surety.

1604, 2026, 2013.

ART. 2004. The lessee has not the power to assign the lease nor to sub-lease, unless it shall have been expressly granted him; but in such case the assignee or sub-lessee cannot use or enjoy the thing except under the terms stipulated with the direct lessee.

752.

ART. 2005. The lessee is obliged to restore the thing at the end of the lease.

He must return it in the condition in which it was delivered to him, taking into consideration the deterioration caused by legitimate use and enjoyment.

If the condition in which it was delivered should not be evident, it shall be understood that he received it in a serviceable condition, unless the contrary be established.

With regard to the damage and loss occurring during his enjoyment, he must prove that they were not due to his fault, nor to the fault of his

guests, employees or sub-lessees, and in the absence of such proof he shall be held liable.

1604 par. 3, 1757.

ART. 2006. The restitution of real property shall be effected by dis-occupying it entirely, placing it at the disposal of the lessor and delivering the keys, if there be any.

ART. 2007. In order that the lessee be considered in default in the restitution of the thing leased, a demand on the part of the lessor shall be necessary, even though notice to quit shall have been served; and if, upon demand, he should not restore it, he shall be adjudged to the full payment of all the damages due to the delay, and to the rest which may be proper against him as illegal detainer.

1608, 2035.

CHAPTER 4.

Of the Expiration of the Lease of Things.

ART. 2008. The lease of things expires in the same manner as other contracts, and especially:

1. By the total destruction of the thing leased.
2. By the expiration of the time stipulated as the term of the lease.
3. By the extinction of the right of the lessor, according to the rules hereafter stated.
4. By a decision of a Judge or Prefect, in the cases in which the law provides therefor.

1546, 1996 par. 2.

ART. 2009. If no time for the duration of the contract shall have been fixed, or if the time be not determined by the special service to which the thing leased is destined or by custom, neither of the parties shall have the right to cause it to cease, unless they give notice to quit in advance.

The notice in advance shall be adjusted to the period or measure of time which governs the payments. If the lease be at so much per day, week, month, the advance notice shall be respectively of one day, of one week, of one month.

The notice to quit shall begin to run at the same time as the next period.

The provisions of this article do not apply to the lease of immovables, treated of in chapters 5 and 6 of this Title.

8, 2002, 2034, 2066. 13 of law 153 of 1887.

ART. 2010. He who has given notice for the abatement of the lease, cannot afterwards revoke it without the consent of the other party.

ART. 2011. If an obligatory period shall have been fixed for one of the parties and a voluntary one for the other, the stipulation shall be observed and the party having the power to terminate the lease at his will, shall, nevertheless, be obliged to give the notice in advance referred to.

ART. 2012. If the term of the lease shall have been fixed in the contract, or if the duration be determined by the special service to which the thing leased was destined, or by custom, advance notice shall not be necessary.

8. 13 of law 153 of 1887.

ART. 2013. When the lease is to terminate by virtue of the notice of either of the parties, or by reason of its term having been fixed in the contract, the lessee shall be obliged to pay the rental of all the days to the date of its termination, even though he shall return the thing voluntarily before the last day.

2003, 1554, 2229.

ART. 2014. The lease having been terminated by notice to quit, or in any other manner, in no case shall it be understood that the apparent acquiescence of the lessor to the retention of the thing by the lessee, is a renewal of the contract.

If the date for the restitution having arrived the contract is not expressly renewed, the lessor shall be entitled to demand it whenever he wishes to do so.

Nevertheless, if the thing be real property, and the lessee, with the acquiescence of the lessor, shall have paid the rent for any period of time subsequent to the termination, or if both parties should have manifested by any act, equally unequivocal, their intention of continuing the lease, the contract shall be considered as renewed under the same conditions as formerly, but not for a longer period than three months in urban property and the time necessary to utilize the work begun and gather the hanging fruits in rural property, without prejudice that at the expiration of such time the lease be renewed in the same manner.

ART. 2015. The lease having been renewed, the securities, as well as the pledges or mortgages constituted by third persons, shall not be extended to the obligations resulting from its renewal.

1690 No. 1, 1701.

ART. 2016. The right of the lessor over the thing leased having been extinguished, through a cause beyond his control, the lease shall expire even before the expiration of the term stipulated for its duration.

If, for example, the lessor shall have been the usufructuary or fiduciary owner of the thing, the lease expires by the arrival of the day upon which the usufruct must cease or the ownership pass to the *cestui que trust*; notwithstanding what may have been stipulated between the lessor and the lessee as to the duration of the lease and without prejudice to the provisions of article 853, paragraph 2.

ART. 2017. When the lessor shall have contracted in a special capacity which makes the duration of his right uncertain, as that of a usufructuary or fiduciary owner, and in all cases in which his right shall be subject to a resolutive condition, there shall be no right to indemnity for damages by reason of the termination of the lease by the resolution of the right. But if having such capacity, he shall have leased as the absolute owner, he shall be obliged to indemnify the lessee unless the latter shall have entered into the contract knowing that the lessor was not the absolute owner.

1988 par. 4.

ART. 2018. In the case of expropriation by reason of public utility, the following rules shall be observed :

1. The lessee shall be given the time necessary to utilize the works begun and harvest the hanging fruits.

2. If the cause of the expropriation should be of such urgency that this is not possible, or if the lease shall have been granted for a term of years, still pending at the time of the expropriation, and this should appear in a public instrument, the lessee shall be entitled to damages from the Nation or from the person making the expropriation.

3. If only a part of the thing leased shall have been expropriated, the rule of article 1988, paragraph 3, shall apply.

ART. 2019. The right of the lessor being extinguished through his own act or fault, as when he shall sell the thing leased of which he is the owner or being the usufructuary thereof, he shall assign the usufruct to the owner, or shall lose the ownership for the non-payment of the sale price, he shall be obliged to pay the lessee damages in all the cases in which the person succeeding him in his right is not bound to respect the lease.

ART. 2020. The following shall be bound to respect the lease :

1. All those to whom the right of the lessor shall be transferred under a lucrative title.

2. All those to whom the right of the lessor shall be transferred under an onerous title, if the lease shall have been contracted in a public instrument, excepting mortgage creditors.

3. The mortgage creditors, if the lease shall have been executed in a public instrument, recorded in the register of public instruments, prior to the mortgage record.

The lessee of real property may himself demand the record of said instrument.

851, 2448, 2422, 2452.

ART. 2021. In the damages which the lessee may suffer by reason of the extinction of the right of its author, and which, according to the preceding articles, he may recover, are included those which the sub-lessee may suffer on his part.

The direct lessee shall seek to recover these damages in his own name, or assign his right of action to the sub-lessee.

The direct lessee must reimburse the sublessee the advance payments.

ART. 2022. An agreement not to alienate the thing leased, even though it entail a clause of the nullity of the alienation, shall not give the lessee any further right than to retain the lease until its natural termination.

1184, 1931, 2440.

ART. 2023. If the creditor or creditors of the lessor should levy execution and attachment upon the thing leased, the lease shall subsist, and the creditor or creditors shall be substituted in the rights and obligations of the lessor.

If the thing be adjudicated to the creditor or creditors, the provisions of article 2020 shall apply.

2446, 2489, par. 2.

ART. 2024. The lessor may terminate the lease in whole or in part when the thing leased requires repairs which prevent its enjoyment in whole or in part, and the lessee shall then have the rights granted him by the rules given in article 1986.

ART. 2025. The lessor can in no case whatsoever, unless there be an agreement to the contrary, terminate the lease under the pretext of needing the thing leased for himself.

ART. 2026. The declared insolvency of the lessee does not necessarily terminate the lease.

The creditor or creditors may be substituted for the lessee, upon furnishing bond to the satisfaction of the lessor.

Should this not be done, the lessor shall have the right to consider the lease terminated; and he shall have a right of action to recover damages against the lessee, according to the general rules.

1668, 2489 par. 2, 1546, 2003, 2056.

ART. 2027. The leases executed by tutors or curators, by the father of a family as the administrator of the property of the son, or by the husband as the administrator of the property of his wife, shall be subject

(with relation to the duration thereof after the termination of the tutorship or curatorship, or the marital or paternal administration), to articles 496 and 1813.

CHAPTER 5.

Special Rules Relating to the Lease of Dwellings, Warehouses and Other Buildings.

ART. 2028. The so-called locative repairs which the *tenant* or lessee of the house is obliged to make, are reduced to the maintenance of the building in the condition in which he received it; but he is not liable for the deterioration due to legitimate wear and tear, or to *force majeure*, or to a fortuitous event, or to the bad quality of the building, by reason of its age, the nature of the soil, or defects in construction.

1985, 1998.

ART. 2029. The tenant is specially bound:

1. To preserve the interior integrality of the walls, roofs, flooring and tubing, replacing the stones, bricks and tiles which may be broken or displaced during the lease.

2. To replace the broken panes in the windows, doors and skylights.

3. To keep the doors, windows and locks in a serviceable condition.

It shall be presumed that he received the building in a good condition, in all these respects, unless the contrary be established.

66, 1768, 1998.

ART. 2030. The tenant is, furthermore, required to keep the walls, floors and other interior parts of the building in a fair state of cleanliness; to keep the wells, sewers and tubing clear, and the chimneys swept.

Grave negligence with regard to any of these matters shall entitle the lessor to recovery of damages, and even to terminate the lease at once in grave cases.

66, 1997.

ART. 2031. The lessor shall have the right to dispossess a tenant who uses the house or building for an illicit purpose, or who, having the right to sublease, subleases to persons of notorious bad conduct and who, in such case, may likewise be dispossessed.

1996.

ART. 2032. If a house or apartment be rented furnished, it shall be understood that the rental of the furniture is for the same term as that of the building, unless otherwise stipulated.

66, 1768.

ART. 2033. He who gives in lease a warehouse or store, is not liable for the loss of the merchandise placed therein, except in so far as the loss shall have been due to his fault.

He shall be specially liable for the bad condition of the building; unless it shall have been manifest or known to the lessee.

1918, 1990, 1991.

ART. 2034. Notice to quit, in the cases in which it lies, must be given in advance one full term of those designated by the agreement or the law for the payment of the rent.

2002, 2009 par. 2.

ART. 2035. Default of a full term in the payment of the rent, shall entitle the lessor, after two demands, between which four days at least must elapse, to terminate the lease at once, if sufficient security be not furnished that the payment will be made within a reasonable period, which shall not be under thirty days.

1608 par. 1, 2007.

CHAPTER 6.

Special Rules Relating to the Lease of Rural Property.

ART. 2036. The lessor is bound to deliver the rural estate according to the terms stipulated. If the area should be different from that stipulated, an increase or reduction in the price or rental may be made, or the contract rescinded, according to the provisions of the Title Of *Purchase and Sale*.

1887 *et seq.*

ART. 2037. The rural lessee or tenant (*colono*) is obliged to use the estate as a good father of a family would, and should he not do so, the lessor shall have the right to stop the misuse or deterioration of the estate, requiring for the purpose a bond or other sufficient security, and even to terminate the lease at once, in grave cases.

1997.

ART. 2038. The tenant is specially bound for the preservation of the trees and woods, confining the enjoyment thereof to the terms stipulated.

If there be no stipulation, the tenant shall confine himself to using the woods for purposes connected with the cultivation and working of the same estate; but he cannot fell any trees for the sale of the lumber, firewood or charcoal.

842.

ART. 2039. The power of the tenant to sow or plant, does not include that of felling the trees to use the place occupied thereby; unless this shall have been expressed in the contract.

ART. 2040. The tenant shall take care that no part of the land leased be encroached upon, and shall be liable for his omission to notify the lessor, if the extent and boundaries of the estate shall have been known to him.

861, 1988, 1989.

ART. 2041. The tenant shall not have the right to demand a reduction of the price or rent, pleading extraordinary fortuitous events which have injured or destroyed the crop.

A tenant on shares is excepted, as by virtue of the kind of partnership existing between the lessor and him, the former bears a proportionate part of the loss which the latter may sustain through a fortuitous event before or after the gathering of the fruits; unless the accident shall occur during the default of the tenant in contributing his share of the fruits.

1876, 1975.

ART. 2042. Whenever an estate shall be leased together with the live stock thereon, and there should be no special stipulation to the contrary, all the profits of said live stock shall belong to the lessee, and this live stock also, with the obligation of leaving on the estate on the termination of the lease, an equal number of head of the same ages and qualities.

If at the end of the lease there should not be sufficient animals on the estate of the said ages and qualities to make the restitution, he shall pay the difference in money.

The lessor shall not be obliged to receive animals which are not habituated to the estate.

ART. 2043. Should there be no fixed time for the duration of the lease, notice to quit must be given one year in advance, in order to terminate it.

The year shall be understood in the following manner:

The day of the year upon which the delivery of the estate to the tenant was begun, shall be considered as the initial day of the successive years, and the year in advance shall be counted from this initial day, even though notice to quit shall have been served some time before.

The parties may agree on another rule, if they deem it advisable.

2002 par. 2, 2009 par. 2.

ART. 2044. If nothing shall have been stipulated as to the time of payment, the custom of the place shall be observed.

2002, 8. 13 of law 153 of 1887.

CHAPTER 7.

Of the Hiring of Domestic Servants.

ART. 2045. In the hiring of domestic servants, one of the parties engages to render the other, for a salary, certain services determined in the contract or by the custom of the country.

8. 13 of law 153 of 1887.

ART. 2046. The service of domestic servants may be contracted for a determinate period; but it cannot be stipulated that it shall last more than one year, unless the stipulation shall be reduced to writing; and not even with this requisite shall the servant be obliged to remain in the service for more than five years from the date of the instrument.

The instrument may be renewed indefinitely.

The time shall be considered compulsory for both parties, in the absence of a stipulation to the contrary.

1769, 1500, 1526, 1767, 66, 1768.

ART. 2047. If no time shall have been determined, the service may cease at the will of any of the parties.

Nevertheless, if the servant should not be able to leave unexpectedly, without serious inconvenience or damage to the master, he may be obliged to remain in the service the time necessary for his replacement; even though notice to quit shall not have been stipulated.

A servant who without grave cause shall violate this provision, shall pay the master a sum equivalent to two weeks' wages.

ART. 2048. A woman who hires out as a wet nurse, shall be obliged to remain in the service during the period of lactation, or until she can be replaced without danger to the health of the child.

ART. 2049. If a servant hired for a certain time should quit without

grave cause before the expiration thereof, he shall pay the master, by way of indemnity, a sum equivalent to one month's wages.

A master who in a similar case should dismiss the servant, shall be obliged to pay him, by way of indemnity, a similar sum, in addition to that due him for services rendered.

If less than one month should be lacking to make up the period stipulated, the penalty shall be reduced on either side to the value of the wages for one-half the time lacking.

ART. 2050. If it shall have been stipulated that to terminate the service notice in advance must be given by one to the other, he who shall violate this stipulation without grave cause, shall be obliged to pay the other a sum equivalent to the time of the advance notice, or of the days lacking to complete it.*

2068.

ART. 2051. The incompetency of the servant, any act of faithlessness or insubordination, and any habitual vice injurious to the service or which disturbs domestic order shall be a grave cause with respect to the master; and with respect of the servant, bad treatment on the part of the master, and any attempt by the latter or the members of his household or guests to induce him to commit a criminal or immoral act.

The contagious sickness of either shall give the other the right to terminate the contract.

The master shall have the same right if, through any cause, the servant should be unable to render the service for more than one week.

2068.

ART. 2052. Upon the death of the master, the contract shall be considered to subsist as to the heirs, and the latter can terminate it only in the manner the deceased could have done so.

2077.

CHAPTER 8.

Of Contracts for the Construction of a Material Work.

ART. 2053. If the artificer furnishes the material for the construction of a material work, the contract is one of sale; but it is not perfected without the approval of the person ordering the work.

Consequently, the risk of the thing is not of the person who ordered it until after its approval, unless he shall have been tardy in declaring whether he approves it or not.

*The Code of Chile says: ". . . a sum equivalent to the wages for the time of the advance notice. . . ."

If the material be furnished by the person who ordered the work, the contract is one of lease or hire.

If the principal material be furnished by the person ordering the work, the artificer furnishing the remainder, the contract is one of lease; otherwise, one of sale.

The letting out of a work is subject to the general rules governing a contract of lease, without prejudice to the special rules following.

1849, 1850, 1973.

ART. 2054. If no price shall have been fixed, it shall be presumed that the parties have agreed upon that ordinarily paid for a work of the same kind, and in the absence of such, that which may be considered equitable in the opinion of experts.

8. 13 of law 153 of 1887.

ART. 2055. If it shall have been agreed to give the power to fix the price to a third person, and the latter should die before the execution of the work is begun, the contract shall be null; if after the execution of the work shall have been begun, the price shall be fixed by experts.

1865, 2063.

ART. 2056. A suit for the recovery of damages shall lie, according to the general rules for contracts, if either party shall have failed to perform the agreement made, or delayed its performance.

Consequently, he who ordered the work, even in the case of a lump sum therefor having been stipulated, may terminate the contract upon reimbursing the artificer for all the expenses, and paying him the value of the work done, and what he might have earned in the work.

1546, 2003.

ART. 2057. The loss of the material is borne by the owner thereof.

Consequently, the loss of the material furnished by the person ordering the work, is borne by the latter; and the artificer is not responsible unless the material is destroyed through his fault or the fault of the persons serving him.

Even though the material should not be destroyed through his fault, nor through that of said persons, the artificer cannot demand the price or wages, except in the following cases:

1. If the work has been examined and approved.
2. If it has not been examined and approved through the delay of the person who ordered the work.
3. If the thing is destroyed by reason of a defect in the material furnished by the person who ordered the work, unless the defect were of

those which the artificer, by reason of his trade, should have known; or that, having been aware thereof, he shall not have given due notice of the same.

1729 *et seq.*, 1876, 1604, 1877 par. 2, 1991 par. 2.

ART. 2058. The examination may be made partially, when it shall have been stipulated that the work should be approved by parts.

ART. 2059. If the person who ordered the work shall plead that it has not been properly constructed, experts shall be appointed by both parties to pass thereon.

If there should be grounds for the charge made by the person ordering the work, the artificer may be bound, at the option of the person who ordered the work, to reconstruct it or pay the damages.

The restitution of materials may be made with others of the same quality or in money.

1546.

ART. 2060. Contracts for the construction of buildings, celebrated with a contractor, who undertakes the entire work for a lump sum fixed in advance, are subject, furthermore, to the following rules:

1. The contractor cannot demand an increase of the price, under the pretext of labor or material having increased in price, or of additions to or modifications in the original plan; unless a special price for such additions or modifications shall have been stipulated.

2. If unknown conditions, as a hidden defect in the soil should occasion expenses which could not be foreseen, the contractor must receive authorization therefor from the owner; and if the latter should refuse, he may appeal to the Judge or Prefect to decide whether or not the additional labor should have been foreseen, and to fix the increase in price which may be proper by reason hereof.

3. If the building is destroyed or threatens to collapse in whole or in part, during the ten years following the delivery thereof, on account of a defect in construction or in the soil which the contractor or the persons employed by him should have been aware of by reason of their trade, or on account of defective material, the contractor shall be liable; if the material shall have been furnished by the owner, the liability of the contractor shall lie only in accordance with article 2041, last paragraph.*

4. The receipt given by the owner, after the conclusion of the work, signifies only that the owner approves it, as apparently in accordance with the plan and the rules of the trade, and does not relieve the contractor of the liability imposed upon him by the preceding paragraph.

5. If the artificers or laborers employed in the construction of the building shall have contracted directly with the owner for their respective

* The citation to article 2041 is incorrect; it should be 2057, last paragraph.

wages, they shall be considered as independent contractors, and shall have a direct right of action against the owner; but if they shall have contracted with the contractor, they shall have no right of action against the owner, except subsidiarily to the extent of what the latter owed the contractor.

2351, 1668, 1670.

ART. 2061. Rules 3, 4 and 5 of the preceding article extend to those who undertake the construction of a building as architects.

ART. 2062. All contracts for the construction of a work are resolved by the death of the artificer or contractor; and if there should be prepared work or materials, which may be of use in the work in question, the person who ordered it shall be obliged to receive them and pay their value; what is due by reason of the work already done shall be calculated proportionately, taking into consideration the price stipulated for the entire work.

The contract is not resolved by the death of the person who ordered the work.

CHAPTER 9.

Of the Hiring of Immaterial Services.

ART. 2063. Immaterial works, or those in which the mind predominates over the labor, as a literary composition, or the typographical correction of a printed document, are subject to the special provisions of articles 2054, 2055, 2056, and 2059.

ART. 2064. Immaterial services consisting in a long series of acts, such as those of salaried writers for the press, secretaries of private individuals, preceptors, nurses, singers and actors, shall be subject to the special rules which follow.

ART. 2065. With regard to each of the partial works of which the service consists, the provisions of article 2063 shall be observed.

ART. 2066. Either of the parties may put an end to the service when he wishes, or with the advance notice agreed upon.

If the remuneration shall consist of periodical payments, either of the parties may give notice to the other of his intention of ending the contract, even though no advance notice shall have been stipulated therein, the notice being given at least half a term in advance.

2009.

ART. 2067. If in order to render the service the person rendering it has been obliged to change his residence, the other party shall pay the reasonable expenses of going and coming.

ART. 2068. If the person rendering the service shall leave without notice, or his bad conduct shall furnish cause for his dismissal, he cannot demand anything by reason of notice or traveling expenses.

2051, 2050.

ART. 2069. The preceding articles apply to the services which according to article 2144 are subject to the rules of mandates, in so far as not in contravention thereof.

CHAPTER 10.

Of the Hiring of Transportation.

ART. 2070. The hiring of transportation is a contract by which one party engages, upon payment of a certain freightage or price, to transport or cause to be transported a person or thing from one place to another.

The person undertaking the transportation is generally called the *carrier*, and takes the name of mule driver, wagon driver, boatman, according to the mode of transportation.

He who is engaged in the industry of directing the transportation of persons or freight, is called a manager of transportation (*empresario de transportes*).

The person who sends or ships the freight is called the *consignor*, and the person to whom it is sent, the *consignee*.

ART. 2071. The obligations imposed herein upon the carrier (*acarreador*), shall be understood as imposed upon the manager of transportation, as liable for the skill and good conduct of the persons he employs.

ART. 2072. The carrier is responsible for the loss or damage which the person may suffer, on account of the bad quality of the carriage, boat or vessel in which the transportation is effected.

He is also liable for the destruction and deterioration of the freight, unless otherwise stipulated, or unless a vice in the freight, *force majeure* or an unforeseen event be proved.

The liability of the carrier shall lie not only for his own act, but for that of his agents or servants.

1991, 1992, 1990.

ART. 2073. The carrier is obliged to deliver the thing at the place and time stipulated, unless he shall prove *force majeure* or a fortuitous event.

The carrier cannot plead the *force majeure* or a fortuitous event which he could have avoided with average prudence or care.

ART. 2074. The price of the transportation of a woman shall not be increased by the fact of her giving birth to a child *en route*, even though the carrier shall have ignored that she was with child.

ART. 2075. He who shall have contracted with the carrier for the transportation of a person or freight, is obliged to pay the price or freightage of the transportation and indemnify the damages caused by the act or fault of the passenger or of his family or servants, or for the vice of the freight.

2497 No. 2, 2347.

ART. 2076. If for any cause the passenger or the freight should not appear in due time, he who shall have treated with the carrier for the transportation, shall be obliged to pay one-half the price or freightage.

The same penalty shall be suffered by the carrier who shall fail to appear at the place and time agreed upon.

ART. 2077. The death of the carrier or of the passenger does not terminate the contract; the obligations are transmitted to the respective heirs, without prejudice to the general provisions regarding *force majeure* or a fortuitous event.

2052, 64, 1604 par. 2.

ART. 2078. The preceding rules shall be observed without prejudice to the special rules for the same objects, contained in special laws, with relation to each kind of traffic, and in the Code of Commerce.

TITLE XXVII.

Of Partnership.

CHAPTER I.

General Rules.

ART. 2079. A partnership or company is a contract by which two or more persons bind themselves to contribute a capital or other effects, to a common fund, for the purpose of dividing among themselves the profits or losses resulting from the investment.

The partnership forms a juridical person distinct from the partners individually considered.

ART. 2080. In the deliberations of the partners having a right to vote, a majority of votes shall decide, which majority shall be computed in accordance with the terms of the articles, and if the latter should contain no provision thereon, the numerical majority of the partners shall be decisive.

The cases in which the law or the articles require unanimity, or which grant any of the partners the right to oppose the others, are excepted.

Unanimity is necessary for any substantial modification of the articles of partnership; unless the articles themselves should provide otherwise.

2098, 2107.

ART. 2081. There is no partnership if each of the partners does not contribute something to the common fund, whether it consist of money or effects, or of an industry, service or work appraisable in money.

Nor is there any partnership without participation in the profits.

By profit is not understood the purely moral benefit, not appraisable in money.

ART. 2082. Any partnership under a universal title, whether of present and future property or of either, is prohibited.

Any partnership of acquets and gains, under a universal title, is likewise prohibited, excepting between spouses.

Nevertheless, any property, duly specified, may be placed in partnership.

1464, 1465, 1466, 1867.

ART. 2083. If a partnership be actually formed which cannot legally subsist, neither as a partnership, nor as a donation, nor as any contract, each partner shall have the power to demand that the previous transactions be liquidated, and withdraw what he may have contributed.

This provision shall not apply to partnerships which are null by reason of the illicit character of the cause or object.

ART. 2084. The nullity of the articles of partnership does not prejudice the actions of third persons in good faith against all and every one of the partners by reason of the operations of the partnership, if it should actually exist.

CHAPTER 2.

Different Kinds of Partnerships.

ART. 2085. The partnership may be *civil* or *commercial*. *Commercial* partnerships are those formed for business which the law classifies as commercial acts. The others are *civil* partnerships.

ART. 2086. It may be stipulated that the partnership entered into, even though not commercial in its nature, be subject to the rules governing a commercial partnership.

ART. 2087. The partnership, whether civil or commercial, may be in general, *in commendam*,* or a joint stock company.

It is a *general* one (*colectiva*) when all the partners administer personally or through a mandatary selected by common agreement.

A partnership *in commendam* (*en comandita*) is that in which one or more of the partners bind themselves only to the extent of what they may have contributed to the partnership.

A joint stock company is that in which the partnership capital is furnished by stockholders who are liable only to the value of their stock, and which is not known by the designation of any individual, but by the object of the company.

ART. 2088. Partners *in commendam* are forbidden to include their names in the firm name, and take part in the administration.

A violation of either of these provisions, shall impose upon them the same liability as upon the members of a general partnership.

ART. 2089. General partnerships may have one or more partners *in commendam*, who shall be governed by the provisions regarding partnerships *in commendam*, the others being subject among themselves and as to third persons to the rules of general partnerships.

ART. 2090. Civil joint stock companies are subject to the same rules as commercial joint stock companies.

CHAPTER 3.

Principal Clauses of the Articles of Partnership.

ART. 2091. Should no time or condition for the beginning of the partnership be stated, it shall be understood that it begins on the date of the

* See La. Civil Code, arts. 2828 [2799], 2839 [2810] to 2851 [2822].

contract; and should no time or condition be stated for its termination, it shall be considered as contracted for the lives of the partners, reserving the right of resignation or withdrawal (*renuncia*).

But if the object of the partnership shall be a business having a limited duration, it shall be understood to be contracted for the time the business lasts.

ART. 2092. The contracting parties may establish the rules which they may consider proper for the division of the profits and losses.

ART. 2093. The contracting parties may entrust the division of the profits and losses to a third person, against whose decision no objection can be made, unless it shall be manifestly unjust, and not even for this cause shall any claim be allowed if three months shall have elapsed since the claimant knew thereof, or if the division shall have been begun by him.

This division cannot be entrusted to any of the partners.

If the person to whom it shall have been entrusted shall die before fulfilling his charge, or through any other cause whatsoever should not fulfill it, said clause shall be considered as not in force, and the persons interested may entrust the charge to another person.

1535, 1865.

ART. 2094. In the absence of an express stipulation, it shall be understood that the division of the profits must be in proportion to the value of the property which each partner may have contributed to the partnership capital, and the division of the losses in proportion to the division of the profits.

ART. 2095. If one of the partners should contribute only his industry, service or labor, and there should be no stipulation determining his share of the partnership profits, this share shall be fixed, in a necessary case, by the Judge; and if no stipulation should fix his share in the losses, it shall be understood that the only loss falling to him is that of said industry, labor or service.

2112.

ART. 2096. The distribution of the profits and losses shall not be understood either with respect to the management of each partner, nor with respect to each transaction in particular.

The transactions in which the partnership suffers a loss, must be offset with those in which it derives a profit, and the quotas stipulated shall include the final result of the partnership transactions.

Nevertheless, the partners *in commendam* or stockholders in the joint stock company, are not obliged to collation the dividends they may have received in good faith.

CHAPTER 4.

Administration of the General Partnership.

ART. 2097. The management of the general partnership may be entrusted to one or more of the partners, either by the articles of partnership, or by an act subsequent thereto unanimously agreed to.

In the former case, the administrative powers of the partner or partners form part of the essential conditions of the partnership, unless otherwise stipulated in the same articles.

ART. 2098. The partner to whom the administration shall have been entrusted by the articles of partnership, cannot renounce his duty except for a cause provided for in the constitutive act, or unanimously accepted by the co-partners.

He cannot be removed from his office excepting in the cases provided for, or for a grave cause, and as such shall be considered one that renders him unworthy of trust or incapable of profitably managing. Any of the partners may demand the removal upon justifying the cause. In the absence of any of the aforesaid causes, the resignation or removal puts an end to the partnership.

2136, 2138, 2193, 2134, 2080 par. 2.

ART. 2099. In the case of a resignation or removal with cause, of the managing partner appointed in the constitutive act, the partnership may be continued, provided all the partners agree thereto, and in the appointment of a new manager, or that the management belong in common to all the partners.

Should there be several managing partners appointed in the constitutive act, the partnership may also continue, if it should be unanimously resolved that the remaining partners shall assume the management.

ART. 2100. The management conferred by an act subsequent to the articles of partnership, may be renounced by the managing partner and revoked by a majority of the co-partners, according to the rules of an ordinary mandate.

2190 *et seq.*

ART. 2101. The partner upon whom the management shall have been conferred by the articles of partnership, or by a subsequent agreement, may act against the opinion of the others; conforming, however, to the legal restrictions, and to those which may have been imposed upon him in the respective mandate. But, nevertheless, the majority of the partners may object to any act which shall not have produced any legal effects.

ART. 2102. If the management be conferred by the articles of partnership, or by a subsequent agreement, upon two or more of the partners, each of the managers may by himself perform any administrative act; unless the title of his mandate shall have provided otherwise.

If they should be forbidden to act separately, they shall not be able to do so, not even under the pretext of urgency.

2157, 502, 510, 2153.

ART. 2103. The managing partner must confine himself to the terms of his mandate, and in what the latter is silent, it shall be understood that he is not permitted to contract in the name of the partnership other obligations, nor make other acquisitions or alienations than those comprised in the ordinary routine thereof.

2158, 2160.

ART. 2104. It shall be the duty of the managing partner to care for the preservation, repair and improvement of the objects forming the fixed assets of the partnership; but he shall not be able to pledge them, not mortgage them, nor alter their form, even though the alterations should appear to him to be advisable.

Nevertheless, if the alterations should have been so urgent that he shall not have been given time to consult his co-partners, he shall be considered with regard to them as a *negotiorum gestor* (*agente officioso*) of the partnership.

2174, 2304 *et seq.*

ART. 2105. He shall bind the partnership in all that he may do within the legal limits, or with a special power from his co-partners; acting otherwise, he only shall be liable.

640, 2120, 2157, 2186, 2199, 2177, 2180.

ART. 2106. The managing partner is obliged to make a report of his management, at the times designated for the purpose by the act conferring the management upon him, and, in the absence of such designation, annually.

2181.

ART. 2107. Should the management not have been conferred upon one or more of the partners, it shall be understood that each one of them has received from the other the power to manage with the powers mentioned in the preceding articles, and without prejudice to the following rules:

1. Any partner shall have the right to object to the administrative acts

of the other, while their performance may be pending, or while they shall not have produced any legal effects.

2. Each partner may avail himself of the things belonging to the partnership assets for his personal use, provided that he employ them according to their ordinary destination, and without prejudice to the partnership and the just use of the others.

3. Each partner shall have the right to oblige the others to defray with him the expenses necessary for the preservation of the partnership things.

4. None of the partners can make any innovation in the immovables subject to the partnership, without the consent of the others.

642, 2080.

CHAPTER 5.

Obligations of the Partners to Each Other.

ART. 2108. The contributions to the partnership capital may consist of the ownership or usufruct of things. In either case the fruits belong to the partnership from the moment the respective share is contributed thereto.

ART. 2109. A partner who on account of slight fault even shall have delayed the delivery of what he is to contribute to the common funds, shall indemnify the partnership for all the damage the delay may have caused it.

This provision applies also to a partner who delays in rendering the industrial service of which his contribution consists.

ART. 2110. If the ownership be contributed, the risk of the thing shall be borne by the partnership, according to the general rules, and the partnership shall be relieved of the obligation of restoring it in kind.

If the usufruct only be contributed, the loss or deterioration of the thing, not chargeable to the fault of the partnership, shall be borne by the partner who shall have contributed only the usufruct of the things.

If what was brought into the partnership should consist of consumable (fungible) things, or of things which deteriorate with use, or of things which have been appraised or whose price has been fixed by common agreement, or of manufactured articles or articles of sale connected with the business or operations of the partnership, the ownership shall be vested in the latter, with the obligation of returning their value to the partner.

This value shall be that which the said things had at the time they were brought into the partnership; but with regard to the things which were contributed under an estimated value, such estimated value only shall be due.

1876, 1877 par. 2, 2057.

ART. 2111. He who contributes the ownership or usufruct of a specific thing, is bound, in case of eviction, to the full warranty of all damage.

1893 *et seq.*

ART. 2112. If the articles of co-partnership shall assure a person who offers his industry a fixed amount to be paid him in full, even though the partnership shall be operating at a loss, this amount shall be considered as the price of his industry, and he who exercises it shall not be considered a partner.

If he be assigned a share of the eventual profits, he shall not be entitled in consideration thereof to anything, when the partnership is operating at a loss, even though said share shall have been assigned to him as the price of his industry.

2095.

ART. 2113. No partner shall be required to contribute to the partnership funds a larger contingent than that which he may have agreed to. But if on account of some change of conditions it should not be possible to attain the object of the partnership without increasing the shares, the partner not agreeing thereto may withdraw, and he must do so if his co-partners so require.

2327.

ART. 2114. No partner, even though he should exercise the fullest administrative powers, can bring a third person into the partnership, without the consent of his co-partners; but he may without such consent enter into a partnership with said third person himself, and then a special partnership shall be formed between him and the third person, which shall only relate to the part of the old partner in the original partnership.

1868.

ART. 2115. Each partner shall be entitled to reimbursement by the partnership of the sums which he may have advanced, with its knowledge, for the obligations he may have contracted legitimately and in good faith with regard to the partnership affairs, and that the partnership indemnify him for the damages which the dangers inseparable from his management may have occasioned him.

Each of the partners shall be bound for such indemnity, in proportion to his partnership interest, and the share of the insolvents shall be distributed in the same manner among all

1404 par. 2, 2329.

ART. 2116. If a partner should have received his quota of a partnership credit, and his co-partners cannot later obtain their respective quotas of the same credit, on account of the insolvency of the debtor, or for another cause, the former must share what he may have received with the latter, even though it shall not exceed his quota, and even though in the receipt he shall have imputed it thereto.

ART. 2117. The profits of the various transactions of the partners in the common interest, belong to the partnership; and the partner whose management shall have been more profitable, shall not be entitled in view thereof to a greater share of the profits.

ART. 2118. If a managing partner be the creditor of a person who is at the same time the debtor of the partnership, and if both debts should be demandable, the sums which he may receive in payment shall be imputed to the two credits *pro rata*, notwithstanding any other imputation which he may have made in the receipt, prejudicing the partnership.

And if in the receipt the imputation should not be to the prejudice of the partnership, but only of the creditor partner, the receipt shall prevail.

The preceding rules shall be understood without prejudice to the right which the debtor has to make the imputation.

1653, 1654, 1655.

ART. 2119. Every partner is liable for the damages which, even through a slight fault, he may have caused the partnership, and he cannot oppose in compensation the earnings which his industry may have produced to the partnership in other transactions, unless such industry should not belong to the partnership capital.

1804, 2326, 63.

CHAPTER 6.

Obligations of the Partners with Respect to Third Persons.

ART. 2120. A partner who contracts in his own name and not in that of the partnership, does not bind it with regard to third persons, not even by reason of the profit which it receives from the contract; the creditor shall have against the partnership only the rights of action of a debtor partner.

It shall not be understood that the partner contracts in the name of the partnership, unless he shall so state in the contract, or the circumstances show it in an unequivocal manner. In case of doubt it shall be understood that he contracts in his private capacity.

If the partner contract in the name of the partnership, but without sufficient power therefor, he does not bind it as to third persons except

subsidiarily, and to the extent of the profit it may have received from the transaction.

The provisions of this article comprise also a partner exclusively entrusted with the administration.

2105, 2177, 2180, 1668, 640, 2304 *et seq.*

ART. 2121. If a general partnership be bound with respect to third persons, the total amount of the debt shall be divided among the partners in proportion to their partnership interest and the quota of the insolvent partner shall be a charge upon the others.

It shall not be understood that the partners are obligated *in solidum*, or otherwise than in proportion to their interest in the partnership, unless this shall be so stated in the title of the obligation, and the latter shall have been contracted by all of the partners, or with a special power from them.

1579 last par., 2325, 2361, 2383, 1422, 1568, 2384.

ART. 2122. The creditors of a partner have no right of action against the partnership property, unless by virtue of a mortgage prior to the partnership, or a mortgage subsequent thereto when the act contributing the immovable does not appear on record in the proper registration office.

Nevertheless, they may bring against the partnership the indirect and subsidiary actions granted them by article 2120.

They may also demand the attachment in their favor of the assignments made to their debtor on account of the partnership profits, or of what the debtor may have contributed to the partnership, or of the actions of the said debtor in the partnership.

ART. 2123. The liability of the partners *in commendam* or of stockholders is governed by the provisions of chapter 2 of this Title.

CHAPTER 7.

Dissolution of the Partnership.

ART. 2124. A partnership is dissolved by the expiration of the term or by the event of the condition which shall have been fixed for its termination.

It may, nevertheless, be extended by the unanimous consent of the partners, and with the same formalities as for its original establishment.

The co-debtors of the partnership shall not be liable for the acts which it may initiate during the extension, unless they shall have assented to such extension.

ART. 2125. The partnership is dissolved by the consummation of the business for which it was established.

But if a day certain shall have been fixed in advance for the termination of the partnership, and if this day should arrive before the conclusion of the business and the partnership should not be extended, the partnership is dissolved.

ART. 2126. The partnership is likewise dissolved by its insolvency or by the extinction of the thing or things which form its entire object.

If the extinction be partial, the partnership shall continue, reserving the right of the partners to demand its dissolution, if with the part remaining it could not be continued profitably, and without prejudice to the provisions of the following article.

ART. 2127. If any of the partners should by his act or fault fail to keep his promise to bring to the common capital the things or the industry which he has engaged to in the articles of partnership, the others shall have the right to consider the partnership dissolved.

1546.

ART. 2128. If a partner shall have contributed the ownership of a thing, the partnership subsists even though such thing shall be destroyed, unless it could not continue profitably without it.

If the usufruct only shall have been contributed, the loss of the thing subject to the usufruct dissolves the partnership, unless the contributing partner shall replace it to the satisfaction of the co-partners, or unless the latter shall determine to continue the partnership without it.

ART. 2129. The partnership is likewise dissolved by the death of any of the partners, unless by a provision of law or by the articles of partnership it is to continue among the surviving partners, with the heirs of the deceased or without them.

But even excepting such case the partnership shall be understood to continue until the managing partners receive notice of the death.

Even after the latter shall have received such notice, the transactions begun by the deceased which do not suppose a peculiar skill or ability in him, must be carried out.

1311, 2194, 2199.

ART. 2130. A stipulation to continue the partnership with the heirs of the deceased is understood as of right in those formed for the lease of an immovable, or for the working of mines, or in joint stock companies.

ART. 2131. The heirs of the deceased partner who are not to enter into partnership with the surviving partners, can demand only what is due their principal, according to the state of the partnership affairs at the time the death became known; and they shall not participate in the subsequent profits or losses, excepting in so far as they should be a consequence of the transactions which had already been initiated at the time the death was known.

If the partnership is to continue with the heirs of the deceased, all of them shall have a right to enter therein, excepting only those who by their age or sex, or other quality, may have been expressly excluded by the law or the articles.

Excepting this case, those who do not have the administration of their property shall participate in the partnership acts through their legal representatives.

ART. 2132. The partnership ends likewise through the incapacity or insolvency of one of the partners.

Nevertheless, the partnership may be continued with the incapacitated person or the bankrupt, and in such case the curator or the creditors shall exercise their rights in the partnership operations.

The husband, as the administrator of the conjugal partnership, shall represent in the same manner the woman whom he may marry and who is a partner.

1668.

ART. 2133. The partnership may end at any time by the unanimous consent of the partners.

ART. 2134. The partnership may end also by the renunciation of one of the partners.

Nevertheless, when the partnership shall have been entered into for a certain time, or for an affair of limited duration, the renunciation shall have no effect, if the articles of partnership should not have given the power to make it, or if there should not be a grave motive, as the non-performance of the obligations of another partner, the loss of an intelligent manager who cannot be replaced from among the partners, the chronic illness of the person making the renunciation incapacitating him for the partnership duties, bad state of its affairs through unforeseen circumstances, or others of similar importance.

2098, par. 2.

ART. 2135. The renunciation of a partner does not produce any effect whatsoever except by virtue of his notification to all the others.

Notification made to the partner or partners who exclusively administer, shall be understood as made to all.

Those of the partners who may not have been notified of the renunciation, may accept it later, if it should appear to them advisable, or consider the partnership in force during the intermediate time.

2191.

ART. 2136. A renunciation made in bad faith or unseasonably, is not valid.

2098.

ART. 2137. A *renunciation in bad faith* is that of a partner who renounces in order to appropriate to himself a profit which should belong to the partnership: in such case the partners may oblige him to divide with them the profits of the business, or to support exclusively the losses if the business should not be successful.

They may, furthermore, exclude him from any participation in the partnership profits, and force him to bear his share of the losses.

ART. 2138. An *unseasonable renunciation* is that of a partner who renounces when his withdrawal is prejudicial to the partnership interests. The partnership shall continue then until the termination of the pending affairs, in which the co-operation of the person making the renunciation may be necessary.

Even though the partner should have an interest in withdrawing, he must await therefor an opportune moment.

The effects of a renunciation in bad faith indicated in the last paragraph of the preceding article, apply to an unseasonable renunciation.

2098, 2d par.

ART. 2139. The provisions of the preceding article apply to a partner who actually withdraws from the partnership without renunciation.

ART. 2140. The dissolution of the partnership cannot be pleaded against third persons, excepting in the following cases:

1. When the partnership shall have expired by the arrival of the certain day fixed for its termination in the articles.
2. When notice of the dissolution shall have been given through the press, or by means of posters affixed in three of the most frequented places of the respective place.
3. When it shall be proved that the third person had due notice thereof by any means whatsoever.

2199.

ART. 2141. Upon the dissolution of the partnership, the objects composing the partnership capital shall be divided.

The rules governing the partition of hereditary property, and the obligations between the coheirs, apply to the division of the partnership funds, and to the obligations between the members of the dissolved partnership, excepting in so far as opposed to the provisions of this title.

1374 *et seq.*

TITLE XXVIII.

Of Mandate.

• CHAPTER I.

Definitions and General Rules.

ART. 2142. A *mandate* is a contract in which one person entrusts to another the direction of one or more business matters, who takes charge thereof for the account and risk of the former.

The person conferring the power is called the donor (*comitente*) or principal (*mandante*), and he who accepts it the attorney-in-fact, agent (*procurador*) and in general, *mandatary*.

1505.

ART. 2143. The mandate may be gratuitous or for a consideration. The consideration is determined by an agreement between the parties, before or after the contract, by the law or by the court.

2063, 2064.

ART. 2144. The services of the professions and careers which suppose long studies, or to which is joined the power of representing and binding another person, as to third persons, are subject to the rules of mandate.

2069.

ART. 2145. An affair that interests the mandatary only, is a mere advice that does not produce any obligation whatsoever.*

ART. 2146. If the business shall interest both the principal and the mandatary, or one of the two, or both and a third person, or a third person exclusively there shall exist a real mandate; if the principal act without the authority of the third person, a quasi contract of a *negotiorum gestio* (*agencia oficiosa*) shall arise between the latter.

516.

ART. 2147. A simple recommendation of the affairs of another, does not constitute, in general, a mandate; the Judge shall decide according to the conditions, whether the terms of the recommendation involve a mandate. In case of doubt, it shall be considered a recommendation.

ART. 2148. A mandatary who executes a void mandate in good faith

* The Code of Chile adds: "But if this advice be given maliciously, it renders the indemnity for damages obligatory."

or who by an unavoidable necessity goes beyond the limits of his mandate becomes a *negotiorum gestor*.

2304.

ART. 2149. The direction of the matter which is the object of the mandate may be conferred by a public or private instrument, by letters, verbally, or in any other intelligible manner, and even by the tacit acquiescence of a person to the management of his affairs by another.

1758, 1760, 1767. 91 to 93 of law 153 of 1887.

ART. 2150. A contract of mandate is considered perfect by the acceptance of the mandatary. The acceptance may be express or implied. An implied acceptance is any act in execution of the mandate.

The mandate having been accepted, the contract cannot be dissolved except by the mutual will of the parties.

1494, 1506 par. 2, 1335, 2193.

ART. 2151. The persons who by reason of their profession or trade take charge of the affairs of others, are obliged to declare as soon as possible whether or not they accept the power conferred upon them by an absent person; and upon the expiration of a reasonable time, their silence shall be considered as an acceptance.

Even though they excuse themselves from the charge, they must take such urgent conservative measures as may be required by the affair entrusted to them.

2176.

ART. 2152. There may be one or more principals, and one or more mandataries.

ART. 2153. If two or more mandataries be appointed, and the principal shall not have divided the management, the mandataries may divide the affairs between them; but if he shall have forbidden them to act separately, what they may do in this manner shall be null.

502, 510, 2102.

ART. 2154. If a person not qualified as to age or a married woman be appointed a mandatary, the act executed by the mandatary shall be valid with respect to third persons, in so far as they are binding upon the latter or upon the principal; but the obligations of the mandatary to the principal and third persons, cannot have any effect excepting in accordance with the rules relative to minors and married women.

1505, 1639, 1504 par. 3.

ART. 2155. A mandatary answers to the extent of a slight fault in the discharge of his trust.

This liability is enforced more strictly against a mandatary who acts for a consideration.

On the contrary, if the mandatary shall have expressed repugnance to the procuration, and has considered himself to a certain extent forced to accept it, yielding to the repeated requests of the principal, the liability incurred by him shall be less strictly enforced.

2247 No. 2, 63, 1604, 2244.

ART. 2156. If the mandate shall comprise one or more specially determined affairs, it is called special; if given for all the affairs of the principal, it is general; and it shall also be such if given for all, with one or two specific exceptions.

The administration is subject in all cases to the following rules.

CHAPTER 2.

Of the Administration of the Mandate.

ART. 2157. The mandatary shall confine himself strictly to the terms of the mandate, excepting in the cases in which he is authorized to act otherwise by the laws.

640, 1505, 2102, 2186.

ART. 2158. The mandate does not naturally confer upon the mandatary more than the power to perform acts of administration, such as the payment of the debts and the collection of the credits of the principal, if they be part of an ordinary administrative management; sue debtors, institute possessory actions and interrupt prescriptions, as to such management, contract for the repairs to the things he administers; and purchase the materials necessary for the cultivation or working of lands, mines, factories, or other industrial objects which may have been entrusted to him.

For all acts beyond these limits, he shall require a special power of attorney.

1640, 2103, 1468, 1633 par. 2, 1688, 1717, 1769, 2471, 1505, 2168.

ART. 2159. When the mandatary shall be given the power to act in the manner he may deem most advisable, he shall not thereby be considered as authorized to alter the substance of the mandate, nor for acts requiring special powers or clauses.

By a clause of free administration there shall be understood only that the mandatary has the power to execute such acts as the laws designate as authorized by such clause.

1688, 1505.

ART. 2160. The proper execution of the mandate includes not only the substance of the business entrusted, but the means by which the principal desired that it should be carried out.

Nevertheless, equivalent means may be employed, if necessity should make them requisite, and the object of the mandate should be thereby fully obtained.

1603, 2104.

ART. 2161. The mandatary may delegate the power if he shall not have been forbidden to do so; but should he not be expressly authorized to do so, he shall answer for the acts of the substitute as he would for his own.

This liability shall be incurred even when he shall have been expressly granted the power to substitute, if the principal shall not have designated the person, and the substitute should be notoriously incapable or insolvent.

1337.

ART. 2162. A substitution unauthorized or not ratified expressly or impliedly by the principal, does not give third persons a right of action against the principal for the acts of the substitute.

2157, 2186.

ART. 2163. When the delegation to a determinate person shall have been expressly authorized by the principal, a new mandate is constituted between the principal and the substitute, which can be revoked only by the principal, and which is not extinguished by the death or other accident occurring to the previous mandatary.

ART. 2164. The principal may in all cases, exercise against the substitute the actions of the mandatary who conferred the power upon him.

ART. 2165. In the inability of the mandatary to make donations are naturally not understood the small fees customarily given to persons in service.

ART. 2166. The acceptance expressed by the mandatary of what is owed the principal, shall not be considered as an acceptance by the latter unless the thing or amount delivered shall have been sufficiently designated in the mandate, and what the mandatary shall have received corresponds in all particulars with the designation.

ART. 2167. The power to compromise, does not include that of obligating, nor vice versa.

The mandatary cannot defer to a decisory oath, excepting in the absence of any other proof.

2471, 2169.

ART. 2168. A special power to sell includes the power to receive the price.

ART. 2169. The power to mortgage does not include that to sell, nor vice versa.

2439, 2412, 2167.

ART. 2170. The mandatary cannot, either in person or through a third party, purchase the things which the principal may have directed him to sell, nor sell out of his own property to the principal what the latter may have ordered him to buy, unless it be with the express approval of the principal.

1854, 1856.

ART. 2171. If he shall have been given the power to negotiate a loan, he himself may lend the money at the interest designated by the principal, or in the absence of such designation, at the current rate of interest; but if empowered to place money at interest, he cannot receive it as a loan to himself without the approval of the principal.

2157.

ART. 2172. The mandatary cannot put out at interest moneys belonging to the principal, without his express authorization.

Should he place it at a higher rate of interest than that designated by the principal, he must pay it to him in full, unless he shall have been authorized to keep the excess.

ART. 2173. In general, the mandatary may take advantage of conditions to execute his charge at a greater profit or a less expense than those designated by the principal, provided that under other respects he does not deviate from the terms of the mandate. He is prohibited from appropriating to himself the amount which exceeds the profit, or is under the expense designated in the mandate.

On the contrary, if he should negotiate with less profit or at a greater expense than the amounts designated in the mandate, the difference shall be imputable to him.

ART. 2174. The powers granted the mandatary shall be interpreted with somewhat more breadth, when he is not in a position to consult the principal.

2104 par. 2.

ART. 2175. The mandatary must abstain from executing a mandate whose execution would be manifestly pernicious to the principal.

ART. 2176. A mandatary who finds himself unable to act in accordance with his instructions, is not obliged to constitute himself a *negotiorum gestor*: it shall be sufficient for him to adopt such conservative measures as circumstances may demand.

But if it should not be possible to fail to act without gravely compromising the principal, the mandatary shall proceed as closely in accordance with his instructions as possible, and as may be most advantageous with regard to the business.

The *force majeure* or fortuitous event which made it impossible for the mandatary to carry out the orders of the principal must be proved by the former.

2151, 1604 par. 3.

ART. 2177. The mandatary may, in the exercise of his procuration, answer in his own name or in that of the principal: if he contracts in his own name he does not bind the principal as to third persons.

2105.

ART. 2178. The mandatary may, by a special agreement, assume the responsibility of the solvency of the debtors and all the uncertainties and trouble of collections. He then constitutes himself the principal debtor as to the principal, and even fortuitous events and *force majeure* are at his risk.

1604 par. 4, 1732, 64.

ART. 2179. The specie which the mandatary may have in his possession, for the account of the principal, is destroyed for the mandatary even by *force majeure* or a fortuitous event, unless it be contained in fastened and sealed boxes or sacks which are affected by the accident or the force, or that by other unequivocal means the identity can be incontestably established.

1604 par. 4, 1730, 2246.

ART. 2180. The mandatary who shall have exceeded the scope of his mandate is liable only to the principal, and is not liable to third persons, unless:

1. He shall not have given them sufficient information as to his powers.
2. When he has personally obligated himself.

2120, 2177.

ART. 2181. The mandatary is obliged to render an account of his administration.

The important items of his account must be accompanied by vouchers unless the principal shall have relieved him of this obligation.

Relief from rendering accounts does not exonerate the mandatary from the charges which the principal may prove against him.

2312, 1319, 504, 1522, 1366, 1367.

ART. 2182. He owes the principal the current interest on money of the latter, which he may have used for his own profit.

He owes, likewise, the interest on the balance which the accounts show against him, from the time he is in default.

1608.

ART. 2183. The mandatary is liable for what he shall have received from third persons, under the mandate (even when not owed the principal), as well as for what he may have failed to receive through his fault.

495, 497, 1315.

CHAPTER 3.

Obligations of the Principal.

ART. 2184. The principal is obliged:

1. To provide the mandatary with what may be necessary for the execution of the mandate.
2. To reimburse him for the reasonable expenditures incurred in the performance of the mandate.
3. To pay him the remuneration agreed upon or the usual compensation.
4. To pay him the advances of money out of the current interest.
5. To indemnify him for the losses he may have incurred without his fault, or under the mandate.

The principal cannot relieve himself from complying with these obligations, by pleading that the business entrusted to the mandatary was not successful or that it could have been transacted at a lower cost; unless he shall prove fault.

ART. 2185. A principal who fails to fulfill on his part that to which he is bound, authorizes the mandatary to discontinue his charge.

ART. 2186. The principal shall fulfill the obligations which the mandatary shall have contracted in his name within the scope of the mandate.

The principal shall, nevertheless, be bound, if he shall expressly or impliedly have ratified any obligations contracted in his name.

2308, 744, 766 No. 2, 1502, 1507, 1505, 2199, 742, 767, 1753 to 1756, 2162.

ART. 2187. When under the terms of the mandate or the nature of the business it shall appear that it should not have been executed partially, the partial execution shall not be binding upon the principal except in so far as he shall be benefited thereby.

The mandatary shall answer for the non-performance of the remainder in accordance with article 2193.

ART. 2188. The mandatary may retain the effects which may have been delivered to him for the account of the principal for the security of the prestations to which the latter might on his part be bound.

2258, 2417 par. 2.

CHAPTER 4.

Of the Termination of the Mandate.

ART. 2189. A mandate terminates:

1. By the performance of the business for which it was constituted.
2. By the expiration of the term or the event of the condition fixed for the termination of the mandate.
3. By revocation by the principal.
4. By renunciation on the part of the mandatary.
5. By the death of the principal or the mandatary.
6. By the bankruptcy or insolvency of either.
7. By the interdiction of either.
8. By the marriage of the woman who is the mandatary.
9. By the cessation of the functions of the principal, if the mandate shall have been given in the exercise thereof.

1641, 1644, 586, 180, 1805, 2197.

ART. 2190. The revocation of a mandate may be express or implied. An implied revocation is the act of conferring the same business upon another person.

If the first mandate be general and the second special, the first mandate subsists as to the affairs not included in the second.

ART. 2191. The principal may revoke the mandate at his will, and an express or implied revocation produces its effects from the day that the mandatary shall have had knowledge thereof.

2135, 2199.

ART. 2192. The principal who makes a revocation shall have the right to demand of the mandatary the restitution of the instruments he may have placed in his hands for the execution of the mandate; but he shall be obliged to give the mandatary a copy signed with his own hand of

such documents as he may require to justify his acts, if the mandatary should demand it.

ART. 2193. The resignation of the mandatary will not put an end to his obligations, until after the expiration of a reasonable time, sufficient for the principal to provide for the business entrusted.

Otherwise he shall be liable for the damages which the resignation may cause the principal; unless it shall be impossible for him to administer through illness or another cause, or without grave prejudice to his own interests.

1335, 2098, 2280, 2187 par. 2.

ART. 2194. Upon the natural death of the principal becoming known, the mandatary shall cease in the discharge of his functions; but if a suspension thereof should prejudice the heirs of the principal, he shall be obliged to conclude the business begun.

2129 par. 3. 9 of law 57 of 1887 and comment.

ART. 2195. A mandate to be executed after the death of the principal is not extinguished by such death. The heirs succeed in this case in the rights and obligations of the principal.

ART. 2196. The heirs of the mandatary qualified to administer his property, shall immediately notify the principal of his death; and they shall do in favor of the latter what they can and the circumstances require: an omission in this regard shall make them liable for the damages.

Executors, tutors and curators are subject to a similar liability, as well as all those who succeed in the administration of the property of the mandatary who shall have died, or become incapacitated.

1342, 1344.

ART. 2197. If a woman shall have contracted a mandate before marriage, the mandate subsists; but the husband may revoke it at will.*

2189, No. 8.

ART. 2198. If there be two or more mandataries, and by the constitution of the mandate they are obliged to act jointly, the absence of one of them, for any of the aforesaid faults,† terminates the mandate.

ART. 2199. In general, whenever a mandate expires through a cause unknown to the mandatary, what the latter may have done in execution of the mandate shall be valid, and shall give a right of action to third persons in good faith, against the principal.

* "If the woman shall have *conferred* a mandate . . ." says the Chilean Code.

† ". . . for any of the aforesaid *causes*, . . ." says the Code of Chile.

The principal shall likewise be bound, as if the mandate were in force, for what the mandatary, aware of the cause which may have caused it to terminate, shall have contracted with third persons in good faith; but he shall have the right to indemnity from the mandatary.

When notice of the act which has caused the expiration of the mandate, shall have been given to the public by means of the newspapers or posters, and in all cases in which ignorance of a third person should not appear probable, the judge may in his discretion, absolve the principal.

2129 pars. 2 and 3, 2135, 2365 par. 2, 2140 No. 2.

TITLE XXIX.

Of Commodatum or Loan for Use.

ART. 2200. *Commodatum* or *loan for use* is a contract by which one of the parties delivers to the other gratuitously a specific thing, movable or real, for him to make use thereof, and with the charge of returning the same thing after he shall have done using it.

This contract is perfected only by the delivery of the thing.

823, 870, 754, 756.

ART. 2201. The lender retains over the thing loaned all the rights which he previously had, but not their exercise, in so far as incompatible with the use granted the borrower.

762, 786.

ART. 2202. The borrower may employ the thing only for the use agreed upon, or, in the absence of an agreement, for the ordinary use of things of the same kind.

In case of violation hereof, the lender may require the repair of all damage, and the immediate restitution, even though a term shall have been stipulated for the restitution.

1603, 1546, 1996 par. 2.

ART. 2203. The borrower is obliged to employ the greatest care in the preservation of the thing, and is responsible to the extent of a very light fault.

He is, therefore, responsible for any deterioration not due to the nature or the legitimate use of the thing; and if said deterioration be such, that the thing can no longer be employed for its ordinary use, the lender may demand the former price of the thing, abandoning his property to the borrower.

But he is not responsible for a fortuitous event, unless:

1. He shall have employed the thing for an improper use, or delayed its restitution, unless it shall appear or be proved that the deterioration or loss by reason of the fortuitous event would have occurred equally without the improper use or delay.
2. Unless the fortuitous event shall have been due to his own fault, even though very slight.
3. In the alternative of saving in an accident the thing loaned or his own, he shall have deliberately preferred his own.
4. He shall have expressly assumed responsibility for fortuitous cases.

1604, 63, 64.

ART. 2204. Notwithstanding the provisions of the preceding article, if the *commodatum* were in favor of both parties, the liability of the borrower shall not exceed a light fault, and if in favor of the lender, a gross fault.

63 pars. 2 and 3, 1604.

ART. 2205. The borrower is obliged to return the thing loaned at the time stated, or in the absence of an agreement, after the use for which it has been loaned.

But the restitution may be demanded even before the time agreed in three cases:

1. If the borrower dies, unless the thing shall have been loaned for a special service which cannot be deferred or suspended.
2. If an unforeseen and urgent need of the thing to the lender arise.
3. If the service for which the thing has been loaned has terminated or does not take place.

1721, 2218.

ART. 2206. The restitution must be made to the lender or to the person having a right to receive it in his name, according to the general rules.

If the thing shall have been loaned by an incapable who was using it with the permission of his legal representative, the restitution to such incapable shall be valid.

ART. 2207. The borrower cannot exempt himself from the restitution

of the thing, by retaining it for security of what the borrower may owe him.

1721, 2218, 2258.

ART. 2208. The borrower has no right to suspend the restitution, by pleading that the thing loaned does not belong to the lender; unless it shall have been lost, stolen or robbed from its owner, or that it be judicially attached in the hands of the borrower.

If a thing lost, stolen or robbed shall have been loaned, the borrower who knows it and does not so inform the owner, granting him a reasonable period to demand its return, shall be responsible for the damage incurred by the owner through the restitution.

And if the owner should not demand its return in due time, the restitution may be made to the lender.

The owner, on his part, cannot require the restitution without the consent of the lender or without a decree of the Judge.

2415.

ART. 2209. The borrower is obliged to stay the restitution of all kinds of offensive arms and of anything else of which he knows a criminal use is to be made, but he must place them at the disposal of the Judge.

The same shall be observed when the lender shall have lost his mind, and has no curator.

ART. 2210. The obligation of making restitution ceases from the time the borrower discovers that he is the true owner of the thing lent.

Nevertheless, if the lender disputes the ownership he must make restitution unless he shall be in a position to prove briefly and summarily that the thing loaned belongs to him.

ART. 2211. The obligations and rights arising from the loan for use, pass to the heirs of both contracting parties, but those of the borrower shall not have the right to continue using the thing loaned, unless it be in the exceptional case of article 2205 No. 1.

ART. 2212. If the heirs of the borrower not having knowledge of the loan, shall have alienated the thing loaned, the lender (if not desirous or not able to make use of an action for revendication or when the latter does not lie), may require the heirs to pay him the just price of the thing loaned, or that they assign to him the rights of action which by virtue of the alienation they may have, at his option.

If they should have been aware of the loan, they shall indemnify all damages, and may even be criminally prosecuted, according to the circumstances attending the act.

946, 1668, 2255.

ART. 2213. If the thing should not belong to the lender, and the owner should demand it before the termination of the loan, the borrower shall have no action for damages against the lender; unless the latter shall have known that the thing belonged to another, and shall not have notified the borrower thereof.

ART. 2214. If the thing shall have been loaned to a number, all are solidarily responsible.

1568.

ART. 2215. The loan for use is not extinguished by the death of the lender.

ART. 2216. The lender is obliged to indemnify the borrower for the expenditures he may have incurred without his previous notice, for the preservation of the thing, under the following conditions:

1. If the expenditures shall not have been of the ordinary expenses for maintenance, such as the feed for a horse.
2. If they shall have been necessary and urgent, so that it shall not have been possible to consult the lender, and it be presumed with reason that had the latter had the thing in his possession he would not have failed to incur them.

1998 par. 2.

ART. 2217. The lender is obliged to indemnify the borrower for the damages caused him through the bad quality or condition of the thing loaned, provided that the bad quality or condition partakes of the following three circumstances:

1. That it shall have been of such nature that it probably would have caused the damage.
2. That it shall have been known to, and not declared by the lender.
3. That the borrower would not have been able, with average care, to know it or avoid the damages.

1991, 1992, 2228.

ART. 2218. The borrower may retain the thing loaned until the indemnity referred to in the two preceding articles shall have been paid; unless the lender shall give surety for the payment of the amount to which he may be adjudged.

961, 1721, 2205, 2210, 2417 par. 2.

ART. 2219. The loan for use is called *precarious* if the lender reserve the right to demand the thing loaned at any time.

ART. 2220. It is considered precarious when the thing is not loaned for a particular service, nor any time fixed for its restitution.

The possession of a thing of another is also precarious when held without a previous contract and through ignorance or mere tolerance on the part of the owner.

762, 786, 2520.

TITLE XXX.

Of Mutuum or Loan for Consumption.

ART. 2221. *Mutuum* or *loan for consumption* is a contract in which one of the parties delivers to the other a certain amount of consumable things with the obligation of restoring a similar number of the same kind and quality.

823.

ART. 2222. A contract of *mutuum* is not perfected except by the delivery, and the delivery transfers the ownership.

740.

ART. 2223. If consumable things which are not money are loaned, a similar amount of things of the same kind and quality must be restored, whether the price thereof shall have risen or decreased in the interval. And if this should not be possible and the creditor should not demand it, the borrower may pay what they may be worth at the time and in the place where the payment was to have been made.*

1864 par. 3.

ART. 2224. If money shall have been loaned, the numerical sum enunciated in the contract only shall be due.

One kind of money may be given for another, in spite of the lender, provided that the two sums bear the relation to each other established by law between the two kinds of money; but the lender shall not be obliged to receive small silver or copper, except to the limit which special laws have fixed or may hereafter fix.

What is stated in this article is understood without prejudice to an agreement to the contrary.

*The Code of Chile provides: “. . . And if this should not be possible or the creditor should not demand it . . .”

ART. 2225. If no term shall have been fixed for the payment, it cannot be demanded before the expiration of ten days after the delivery.

1551.

ART. 2226. If it shall have been agreed that the borrower shall pay when able to do so, the Judge may, taking the circumstances into consideration, fix a term.

1551 par. 2.

ART. 2227. If a person who did not have the right to alienate, shall have made the loan, the specific things may be recovered as long as their identity is evident.

Their identity having disappeared, he who received them in bad faith shall be obliged to make immediate payment, with the maximum interest allowed by law; but a borrower in good faith shall be bound only to the payment with the interest agreed, and after the term granted by article 2225.

1871.

ART. 2228. The lender is responsible for the damages suffered by the borrower on account of the bad quality or hidden defects of the thing loaned, under the conditions mentioned in article 2217.

If the hidden defects were such that, if known, the contract would probably not have been entered into, the borrower may demand its rescission.

1914 *et seq.*

ART. 2229. The borrower may pay the entire sum loaned, even before the term stipulated, unless interest shall have been agreed upon.

1554, 1649, 2013.

ART. 2230. Interest in money or consumable things may be stipulated.

ART. 2231. A conventional interest which shall exceed by one-half that proved to have been at the time of the agreement the current rate of interest, shall be reduced by the Judge to said current interest, if the debtor should request it.

1601, 2291.

ART. 2232. If interest should be stipulated in the agreement without stating the rate, the legal rate of interest shall be understood to be fixed.

The legal rate of interest is fixed at six per cent per annum.

ART. 2233. If interest shall have been paid, although not stipulated, it cannot be sued for nor imputed to the capital.

2314.

ART. 2234. If interest shall have been stipulated, and the lender shall have given a receipt for the principal, without expressly reserving the interest, it shall be presumed to be paid.

66, 1653 par. 2, 1628.

ART. 2235. The compounding of interest cannot be stipulated.

15, 1617 No. 3, 1523, 1526.

TITLE XXXI.

Of Deposit and Sequestration.

ART. 2236. A deposit in general is a contract by which a corporeal thing is entrusted to a person who binds himself to preserve it and return it in kind.

The thing deposited is also called deposit.

775, 786.

ART. 2237. The contract is perfected by the delivery which the depositor makes of the thing to the depositary.

ART. 2238. The delivery may be made in any manner which transfers the seizin of what is deposited.

The parties may also agree that one of them retain as a deposit what was in his possession for another cause.

775, 786.

ART. 2239. There are two species of deposit, that properly so called and sequestration.

CHAPTER I.

*Of the Deposit Properly so Called.**

ART. 2240. The deposit properly so called is a contract in which one of the parties delivers to the other a corporeal or movable thing† to take care of and return in kind, at the option of the depositor.

2342.

* See La. Civil Code, arts. 2928 [2899] to 2931 [2902].

† “. . . a corporeal and movable thing . . .” says the Code of Chile.

ART. 2241. An error as to the personal identity of either contracting party, the substance, quality or amount of the thing deposited, does not invalidate the contract.

If the depositary, however, shall have been mistaken regarding the person of the depositor, or if he shall discover that the care of the thing deposited is dangerous to him, he may immediately return the deposit.

1512.

ART. 2242. When according to the general rules this contract must be drawn in writing, and this formality shall have been omitted, the word of the depositary shall be taken as to the fact itself of the deposit, the thing deposited or the fact of the return.

1757, 2249. 91 to 93 of law 153 of 1887.

ART. 2243. This contract cannot have full effect except between persons capable of contracting.

If the depositor were not capable, the depositary shall contract, nevertheless, all the obligations of such.

And if the depositary were not capable, the depositor shall only have a right of action to demand the thing deposited, while still in the possession of the depositary, and in the absence of this condition, he shall only have a personal action against the depositary to the extent to which the deposit may have made him wealthier, reserving the right which he may have against third possessors, and without prejudice to the penalties which the laws impose upon a depositary in case of fraud.

1504, 1747, 2262, 63 last par.

ART. 2244. The deposit properly so-called is gratuitous.

If any compensation for the simple custody of a thing be stipulated, the deposit becomes a hire of service, and the person rendering the service is liable to the extent of a slight fault; but under all other respects he is subject to the obligations of the depositary and enjoys the rights of such.

2155, 2063 *et seq.*, 63, 1604, 2258.

ART. 2245. By the mere deposit, the depositary is not granted the power to use the thing deposited without the permission of the depositor.

This permission may sometimes be presumed, and the Judge shall have the power to qualify the circumstances which justify the presumption, as the relations of friendship and trust between the parties.

This permission is more easily presumed as to things which do not appreciably deteriorate by use.

2420, 66, 1768 par. 3.

ART. 2246. In the deposit of money, if it be not in a locked chest, the key to which is held by the depositor, or with other precautions which render it impossible to remove it without breakage, it shall be presumed that its use is permitted, and the depositary shall be obliged to return a similar amount in the same money.

2179, 66, 2253.

ART. 2247. The parties may stipulate that the depositary shall answer for all faults whatsoever.

In the absence of such stipulation he shall answer for a grave fault only.

But he shall be liable for a light fault in the following cases :

1. If he shall have offered himself of his own free will or shall have sought preference to another person as depositary.

2. If he shall have any personal interest in the deposit, either by reason of being permitted to use it in certain cases, or by reason of compensation being allowed him.

1602, 1604 par. 4, 63, 2263, 2306 par. 2, 1604, 2155.

ART. 2248. The obligation to care for the thing comprises that of respecting the seals and locks of the package containing it.

ART. 2249. If the seals shall have been broken or the locks forced through the fault of the depositary, the declaration of the depositor regarding the number and quality of the things deposited shall be accepted; but should there be no fault on the part of the depositary, in case of disagreement proof shall be necessary.

The fault of the depositary is presumed in every case of breakage or force.

2242, 66, 1604.

ART. 2250. The depositary must not violate the secret of a confidential deposit, nor can he be obliged to reveal it.

ART. 2251. The restitution is subject to the will of the depositor.

If a time be fixed for the restitution, this clause shall be binding only upon the depositary, who by virtue thereof cannot return the deposit before the time stipulated; excepting in the determined cases which the laws express.

1721, 2252, 2280.

ART. 2252. The obligation to take care of a thing lasts until the depositor shall ask therefor; but the depositary may demand that the depositor dispose thereof upon the expiration of the time stipulated for the duration of the deposit, or when, even though the term shall not have expired, the deposit be in danger in his power or cause him damage.

And if the depositor do not dispose thereof, it may be consigned at his expense with the legal formalities.

2208, 2209, 2210, 2280, 1658 *et seq.*

ART. 2253. The depositary is bound to the restitution of the same individual thing or things which may have been placed in deposit, even though consisting of money or consumable things, excepting in the case of article 2206.

The thing deposited must be restored with all its accessions and fruits.*

713 *et seq.*, 2428.

ART. 2254. A depositary who shall not have delayed the restitution, is naturally not responsible for *force majeure* or a fortuitous event; but if in consequence of the accident he shall receive the price of the thing deposited, or another in its place, he is obliged to return to the depositor what may have been given him.

1604 par. 2.

ART. 2255. If the heirs, not having notice of the deposit, shall have sold the thing deposited, the depositor (if not able or not willing to avail himself of the action for revendication, or if the latter should not lie) may demand that they return to him what they may have received for said thing, or that they cede to him the rights of action which they may have by virtue of the alienation.

752, 1871, 1874, 1875, 1668, 2212.

ART. 2256. The cost of the transportation necessary for the restitution of the deposit shall be borne by the depositor.

ART. 2257. The rules of articles 2205 to 2210, apply to the deposit.

ART. 2258. The depositary cannot, without the consent of the depositor, retain the thing deposited, under the plea of compensation, or as security for what the depositor may owe him; but only by reason of the expenses and damages referred to in the following article.

1721, 961, 2188, 2207, 2417 par. 2, 2421.

ART. 2259. The depositor must indemnify the depositary for the expenses he may have incurred in the preservation of the thing, and which he himself would probably have incurred, had he had it in his possession; as also for the damage which without his fault the deposit may have occasioned him.

961, 2277.

* Article 2246 and not article 2206 should have been cited (*Angarita*).

CHAPTER 2.

Of the Necessary Deposit.

PARAGRAPH 1.

ART. 2260. A properly so-called deposit is a necessary one, when the selection of the depositary does not depend upon the free will of the depositor, as in the case of a fire, earthquake, pillage or another similar casualty.

ART. 2261. Proof of any kind whatsoever is admissible with regard to the necessary deposit.

1767. 91 to 93 of law 153 of 1887.

ART. 2262. The necessary deposit of which an adult takes charge who has not the free administration of his property, but who is in his sound mind, constitutes a quasi-contract, which is binding upon the depositary without the authority of his legal representative.

1504 par. 3, 2243.

ART. 2263. The liability of the depositary extends to a slight fault.

2247, 63, 1604.

ART. 2264. The necessary deposit is, in other matters, subject to the same rules as the voluntary deposit.

PARAGRAPH 2.

ART. 2265. The effects which a person seeking lodging in a tavern brings therein, and delivers to the innkeeper, or to his employees, shall be considered as deposited under the custody of the innkeeper. This deposit partakes of the nature of a necessary deposit, and articles 2261 *et seq.*, apply thereto.

ART. 2266. The innkeeper is liable for any damage which may be caused said effects through his own or his employees' fault, or through the fault of the travelers who visit the inn, and even for theft and robbery; but not for *force majeure*, unless it be chargeable to his fault or to fraud.

2497 No. 1, 63 last par., 64.

ART. 2267. The innkeeper is, furthermore, bound to the security of the effects which the guest keeps with him. In this respect he is responsible for the damage caused, or the theft or robbery committed by the servants of the inn, or other strangers who do not belong to the household or are not visitors of the guest.

ART. 2268. A guest who complains of damage, theft or robbery, must prove the number, quality and value of the effects which have disappeared.

ART. 2269. A traveler who brings with him effects of great value, which ordinarily are not included in the baggage of persons of his class, must so inform the innkeeper, and even show them to him, should he require it, in order that special care may be taken in their custody; and should he not do so, the Judge may dismiss the complaint in this part.

ART. 2270. If the act were, in some manner, chargeable to the guest, the innkeeper shall be absolved.

ART. 2271. The liability of the innkeeper shall also cease, when it shall have been agreed to relieve him therefrom.

ART. 2272. The provisions of the preceding articles apply to the managers of restaurants, (*fondas*), cafés, billiard rooms and bathing establishments, and other similar establishments.

CHAPTER 3.

*Of Sequestration.**

ART. 2273. *Sequestration* is the deposit of a thing over which two or more persons are engaged in litigation, in the hands of another who must return it to the person in whose favor the decision is rendered.

The depositary is called the sequestrator.

762, 786.

ART. 2274. The rules governing sequestration are the same as those for the deposit properly so-called, reserving the provisions of the following articles and those of the laws of procedure.

ART. 2275. Not only movables, but real property also may be the subject of sequestration.

ART. 2276. The sequestration is conventional or judicial.

The *conventional* sequestration is constituted by the mere consent of the persons in litigation over the object.

The *judicial* sequestration is constituted by a decree of a Judge, and no further proof is necessary.

958.

ART. 2277. The depositors contract the same obligations with regard to the sequestrators as the depositor with regard to the depositary in a deposit properly so-called, as regards the expenses and damages which the sequestration may have caused him.

961, 2258, 2259, 2417 par. 2, 2421.

* See La. Civil Code, arts 2972 [2941] to 2981 [2950].

ART. 2278. If the sequestrator should lose the seizin, he may demand it of any person, including any of the depositors, who may have taken it without the consent of the other, or without an order from the Judge, as the case may be.

950, 2342.

ART. 2279. The sequestrator of an immovable has, with regard to its administration, the powers and duties of the mandatary, and must give an account of his acts to the future assignee.

2158, 2181.

ART. 2280. Until a decision of adjudication partaking of the nature of a *res judicata* shall have been made, the sequestrator cannot be relieved of his charge, except by reason of absolute necessity, of which he shall advise the depositors, if the sequestration be conventional, or the Judge otherwise, in order that he may provide for his relief.

He may also discontinue before such decree, by the unanimous will of the parties, if the sequestration be conventional, or by a decree of the Judge, otherwise.

2252, 2251, 2193, 2281.

ART. 2281. After said decision shall have been rendered and become final, the sequestrator must restore the deposit to the person to whom it may have been awarded.

TITLE XXXII.

Of Aleatory Contracts.

ART. 2282. The principal aleatory contracts are:

1. Gambling.
2. Betting; and
3. The constitution of life annuities.

1498.

CHAPTER I.

Of Gambling and Betting.

ART. 2283. Gambling and betting do not produce a right of action, but only an exception.

He who wins cannot demand payment.

But if he who loses, pays, the amount paid cannot be recovered by suit, unless it shall have been won by fraud.*

ART. 2284. There is fraud on the part of the person making the wager, if he positively knows that the act in question has taken place or will take place.

63 last par.

ART. 2285. What has been paid by persons who do not have the free administration of their property, may be recovered by suit, in all cases, by the respective parents, husbands, tutors or curators.

ART. 2286. Notwithstanding the provisions of article 2283, games of strength or physical skill, such as that of arms, foot or horse racing, "pelota," ball games, and others of a similar character, produce a right of action, provided that they are not in contravention of the police laws.

In case of contravention, the Judge shall dismiss the complaint *in toto*.

95 of law 153 of 1887.

CHAPTER 2.

Of the Constitution of a Life Annuity.

ART. 2287. The *constitution of a life annuity* is an aleatory contract under which one person binds himself, under an onerous title, to pay to another a periodical allowance or pension, during the life of either of these two persons or of a third person.

* Article 95 of law 153 of 1887, claims to amend this article of the Civil Code; but in truth it does not amend, but impliedly repeals it (*Angarita*).

ART. 2288. The life annuity may be constituted in favor of two or more persons to enjoy it simultaneously, with or without the right of accretion, or successively, according to the order agreed, provided that they all exist at the time of the contract.

ART. 2289. It may also be stipulated that the life annuity shall be due during the life of a number of persons, who shall be designated. No person not existing at the time of the contract can be designated for this object.

ART. 2290. The price of the life annuity, or what is paid for the right to receive it, may consist of money, or of real property or movables.

The pension can be in money only.

106 par. 2, of law 153 of 1887.

ART. 2291. The contracting parties are at liberty to establish such pension as they may desire, under title of life annuity. The law does not determine any proportion between the income and the price.

105 of law 153 of 1887.

ART. 2292. The contract of life annuity must be executed by a public instrument, and shall be perfected only by the delivery of the price.

1760. 106 of law 153 of 1887.

ART. 2293. A contract is null if before it is perfected the person upon whose existence the duration of the annuity depends dies, or at the time of the contract suffered from a disease which may have caused his death within the next thirty days.

ART. 2294. The creditor cannot demand the rescission of the contract, even in the event of the pension not being paid him, nor can the debtor demand such rescission even by offering to return the price, and return or remit the pensions due, unless the contracting parties shall have stipulated otherwise.

ART. 2295. In case of non-payment of the pension, the property of the debtor may be proceeded against for the payment of the pensions in arrears, and he may be forced to give surety for future payments.

ART. 2296. If the debtor should not furnish the surety stipulated, the creditor may demand that the contract be annulled.

ART. 2297. If the third person, upon whose existence the duration of the annuity depends, should survive the person who is to enjoy it, the right of the latter is transferred to those who succeed him *mortis causa*.

415.

ART. 2298. In order to demand the payment of the life annuity, it shall be necessary that the existence of the person upon whose life it depends be established.

ART. 2299. The person having died, upon whose existence the duration of the life annuity depended, the amount for the full current year shall be due, if advance payment thereof should have been stipulated in the contract, and in the absence of such stipulation only that part corresponding to the number of days elapsed shall be due.

1418.

ART. 2300. The life annuity is not extinguished by any prescription whatsoever; unless it shall not have been received or claimed for more than thirty consecutive years.

2533 No. 1. 125 of law 153 of 1887.

ART. 2301. When a life annuity is constituted gratuitously, there is no aleatory contract.

It shall be subject, therefore, to the rules governing donations and legacies, without prejudice to being governed by the provisions of the preceding articles in so far as applicable thereto.

1498, 1443 *et seq.*, 1162 *et seq.*, 1242.

TITLE XXXIII.

Of Quasi-Contracts.

ART. 2302. The obligations contracted without any agreement, arise either from the law, or from a voluntary act of one of the parties. Those arising from the law are expressed therein.

If the act from which they result be licit, it constitutes a quasi-contract.

If the act be illicit, and committed with the intention of committing wrong, it constitutes a quasi-offense.

In this title quasi-contracts only are treated of.*

1494.

ART. 2303. There are three principal quasi-contracts: the *negotiorum gestio* (*agencia oficiosa*), the payment of what is not due and the community.

CHAPTER I.

Of Negotiorum gestio or the Management of Another's Affairs.†

ART. 2304. The *negotiorum gestio* or the management of another's affairs, commonly called management of affairs, is a contract by which he who administers the property‡ of a person without a mandate, becomes obligated to the latter, and binds said person in certain cases.

ART. 2305. The obligations of the *negotiorum gestor* or manager are the same as those of the mandatary.

2157 *et seq.*

ART. 2306. He must consequently, employ in the management the care of a good father of a family; but his liability may be greater or less by reason of the circumstances which may have determined the management.

If he shall have taken charge thereof to avoid an imminent danger to the interests of another, he is liable only for fraud or grave fault; and if he shall have assumed the management voluntarily, he is liable to the extent of a slight fault; unless he shall have offered to assume it, preventing others from so doing, as in such case he shall be liable for all faults.

63, 1604, 2247 No. I.

* Expressly repealed by article 45 of law 57 of 1887, and replaced by article 34 of the same law.

† See I.a. Civil Code, arts. 2295 [2274] to 2300 [2293].

‡ The Code of Chile says: "The *negotiorum gestio* . . . is a quasi-contract by which he who administers the affairs of another . . ."

ART. 2307. He must, likewise, take charge of all the branches of the business, and continue the management until the person interested can assume it or place it in the hands of another.

If the person interested should die, he must continue the management until the heirs shall act.

2158.

ART. 2308. If the business shall have been well administered, the person interested shall perform the obligations which the manager may have contracted in the management, and shall reimburse him for the useful and necessary expenditures.

The person interested is not obliged to pay any salary whatsoever to the manager.

If the business shall have been badly administered, the manager shall be responsible for the damages.

515, 516, 2186.

ART. 2309. He who administers the affairs of another against the express prohibition of the person interested has no right of action against him, excepting in so far as such management shall have been actually profitable to him, and the profit shall exist at the time of the suit, for example, if the management shall have resulted in the extinction of a debt which, without the same, the person interested would have had to pay.

The Judge, nevertheless, shall in such case grant the person interested the term he may demand for the payment of the debt, and which may appear equitable in view of the circumstances of the defendant.

1632, 2400 No. 2, 1551 par. 2.

ART. 2310. He who believing that he is transacting his own business transacts that of another, shall be entitled to reimbursement to the extent of the net profit which said person may have derived, and which shall be in existence at the time of the suit.

ART. 2311. He who believing that he is transacting the business of one person is transacting that of another, has with regard to the latter the same rights and obligations as he would have had if his intention had been to serve the real person interested.

ART. 2312. The manager cannot bring any action against the person interested, without first having rendered a regular account of the management, with vouchers or equivalent proofs.

2181.

CHAPTER 2.

Of the Payment of What is not Due.

ART. 2313. If he who has made a payment, shall prove that he did not owe it, he shall have the right to sue for the recovery of the amount paid.

Nevertheless, if a person, in consequence of his own error, shall have paid the debt of another, he shall not have a right of action to recover against the person who, as a consequence of the payment, has suppressed or cancelled a title necessary for the collection of his credit, but he shall have the rights of action of the creditor against the debtor.

1668, 1697, 1698, 1117, 1187, 1190, 2233, 2401, 1542, 1552, 1872.

ART. 2314. What shall have been paid in the performance of a purely natural obligation, of those enumerated in article 1527, cannot be sued for.

2233.

ART. 2315. Even what may have been paid by error of law may be recovered by suit, when the payment did not have as a basis even a purely natural obligation.

9, 768, 1509.

ART. 2316. If the defendant shall confess the payment, the plaintiff must prove that it was not due.

If the defendant deny the payment, the plaintiff must prove it; and if proved, it shall be presumed as not due.

1757, 66, 1769.

ART. 2317. He who gives what he does not owe is not presumed to donate it, unless it be proved that he had full knowledge of what he was doing, both in fact as in law.

1450, 2373, 1454.

ART. 2318. He who shall have received money or a fungible thing which was not due him, is bound to the restitution of a similar amount of the same kind and quality.

If he shall have received in bad faith, he also owes the current interest.

ART. 2319. He who shall have received in good faith, is not responsible for the deterioration or loss of the specific thing given him under the false impression of it being due him, even though it shall have been due to his negligence; excepting in so far as he shall have become wealthier thereby.

But from the time he knows that the thing was improperly paid, he contracts all the obligations of a possessor in bad faith.

961 *et seq.*, 768 *et seq.*

ART. 2320. He who, in good faith, shall have sold the thing which may have been given him as due him, without it being so due, is obliged to return the price of the sale, and to cede the actions which he may have against the purchaser who may not have paid him in full.

If he shall have been acting in bad faith when he made the sale, he is bound as any possessor who has ceased to possess fraudulently.

955, 1668, 957, 1871.

ART. 2321. He who shall have paid what he did not owe, cannot seek to recover the specific thing possessed by a third person in good faith, under an onerous title; but he shall have the right to have the third person who possesses it under any lucrative title, return it to him, if the thing be subject to revendication, and is in his possession.

The obligations of the donee who makes restitution are the same as those of the author thereof, according to article 2319.

947 par. 2, 1547, 1548.

CHAPTER 3.

Of the Quasi-Contract of Community.

ART. 2322. The *community* of a universal or singular thing, between two or more persons, without any of them having entered into a partnership, or celebrated any other agreement with regard to the same thing, is a kind of quasi-contract.

ART. 2323. The right of each of the co-owners in the common thing, is the same as that of the partners in the partnership assets.

2094, 2107.

ART. 2324. If the thing be universal, as an inheritance, each of the co-owners is bound to the debts of the thing held in common, as the heirs in hereditary debts.

1411 *et seq.*

ART. 2325. With regard to the debts contracted for the account of the community during the same, the co-owner who contracted them only is liable; and he shall have a right of action against the community for the reimbursement of what he may have paid for it.

If the debt shall have been contracted by the co-owners collectively, without a statement as to quota, all of them are obligated to the creditor in equal parts, if solidarity shall not have been stipulated; reserving the right of each against the others for the payment of what they may have paid over their rightful quota.

2115, 2120, 1003, 1581, 1583, 2121, 2350 last par., 1415.

ART. 2326. Each co-owner owes the community what he takes therefrom, including the current interest on the community money which he may have used in his private business, and is liable to the extent of a slight fault for the damage he may have caused the common things and business.

1804, 2119.

ART. 2327. Each co-owner must contribute to the works and repairs of the community in proportion to his quota.

2113.

ART. 2328. The fruits of the thing held in common must be divided among the co-owners in proportion to their quotas.

2092, 2094, 1395 No. 3.

ART. 2329. In the prestations to which the co-owners are bound among themselves, the quota of the insolvent shall be a charge upon the others.

2115 last par., 1404 par. 2.

ART. 2330. Each of those who shall possess in common a parcel of land suitable for cultivation, has the option of being allotted for his private use a portion in proportion to the quota of his right; and none of the co-owners can disturb the others in the portions which may be allotted to them.

ART. 2331. Each of those who shall possess in common land suitable for the breeding or mere maintenance of cattle, may maintain thereon a number of animals in proportion to the quota of his right.

ART. 2332. Each of those who possess wooded land in common, may remove therefrom the lumber and fire wood which he may need for his own use; but he cannot exploit it otherwise, nor permit other persons to make use of such wooded land without the assent of all the persons interested.

ART. 2333. When a number of individuals have pasture lands, contiguous to each other, which cannot be divided by fences, and therefore the cattle of one cannot be prevented from going on the land of another,

any of the persons interested may request the Judge to declare such lands subject to the rules governing lands held in common, for the sole purpose of the maintenance of the animals and cattle.

ART. 2334. In any case one or more of the co-owners may demand that the thing held in common be divided or sold and the proceeds divided.

Division shall be preferred whenever land is in question, and the sale when a dwelling, wooded land or any other thing which cannot be divided or easily marked off into portions.

ART. 2335. The division of things held in common and the rights and obligations arising therefrom, shall be subject to the provisions of the preceding articles, and in all that is not provided by the same, the rules governing the partition of an inheritance shall be observed.

ART. 2336. When one or more of the owners in common shall request the sale of the thing held in common, the other co-owners or any of them may purchase the rights of the petitioners, paying them their share, according to the appraisement of the thing.

ART. 2337. When the sale of a thing held in common is to be effected, it shall be divided for the purpose into lots, if one-third of the co-owners should request it, provided that such division shall facilitate the sale and give probabilities of larger returns.

ART. 2338. When land held in common is to be divided, the Judge shall direct that it be appraised by experts, and the total value shall be distributed among the persons interested in proportion to their rights; after which, a portion of land of the value which may have fallen to him shall be awarded each person interested, the following rules being observed:

1. The value of each parcel of land shall be calculated according to its utility and not its area; it shall not be necessary, therefore, to have recourse to a survey, unless the latter may serve to better calculate the value.

2. If there be dwellings, cultivation or other improvements made particularly by any of the co-owners, an endeavor shall be made to award to the latter, in so far as possible, the portions upon which are situated the dwellings, cultivated sections or improvements belonging to him without subdividing the portion of each.

3. If any of the co-owners should request that he be adjudicated the lots in one subdivision, this shall be done, and

4. If the persons interested shall not have consigned before the beginning of the distribution, their respective quota towards the estimated expenses of the operation, said quota shall be deducted from the respective lots and a portion of land equivalent thereto shall be separated for the said expense.

ART. 2339. The common channel of drainage of a lake or swamp, which belongs to a number of persons, or which extends over their lands,

is a community thing among them, and when one or more of the persons interested shall desire to clean or deepen said channel, or open a new one to better drain the lands, all must contribute to the cost thereof, in proportion to the benefit accruing to them according to the opinion of experts, and should they not do so, those who execute the work shall be entitled to an indemnity consisting of one-half the increased value which the lands of those who may not have contributed shall acquire; in order to ascertain this increased value, the lands shall be appraised by experts, before the work is done.

ART. 2340. The community terminates:

1. By the merger of the shares of all the co-owners in one and the same person.
2. By the destruction of the thing held in common.
3. By the division of the common assets.

TITLE XXXIV.

Common Liability for Offenses and Faults.

ART. 2341. He who shall have been guilty of an offense or fault, which has caused another damage, is obliged to repair it, without prejudice to the principal penalty which the law imposes for the fault or offense committed.

ART. 2342. This indemnity may be demanded not only by him who is the owner or possessor of the thing which has suffered the damage or by his heir, but also by the usufructuary, the person having the habitation, or the user, if the damage be prejudicial to his right of usufruct, habitation or use. It may also be requested in other cases, by him who has the thing under his responsibility; but only in the absence of the owner.

978, 1988, 670, 870, 2278, 2418.

ART. 2343. He who caused the damage and his heirs are obliged to pay the indemnity.

He who shall profit through the fraud of another, without having participated therein, is obligated only to the extent of the value of the benefit he may have derived.

1411, 1580, 1515 par. 2.

ART. 2344. If an offense or fault shall have been committed by two or more persons, each of them shall be solidarily liable for any damage arising from said offense or fault, with the exceptions of articles 2350 and 2355.

Any fraud or deceit committed by two or more persons produces the solidary action of the preceding paragraph.

938, 1568 par. 2, 1580.

ART. 2345. An intoxicated person is liable for the damage caused through his offense or fault.

ART. 2346. Those under ten years of age and the insane are not capable of committing an offense or fault; but the persons under whose charge said minors or insane persons may be, shall be responsible for the damages caused by them, if they can be charged with negligence.

1999, 1738.

ART. 2347. Every person is liable not only for his own acts for the purpose of the indemnity of damage, but also for the acts of those who may be under his care.

Thus, the father, and in the absence of the latter, the mother, is responsible for the act of the minor children living in the same house.

Thus, the tutor or curator is responsible for the conduct of the ward who lives under his dependency and care.

Thus, the husband is responsible for the conduct of his wife.

Thus, the directors of colleges and schools answer for the acts of their pupils while they are under their care, and artisans and contractors, for the acts of their apprentices or employees, in the same case.

But the liability of such persons shall cease, if with the authority and the care which their respective quality confers upon them and prescribes, they should not have been able to prevent the act.

1738, 1999, 2075, 181 par. 2.

ART. 2348. Parents shall always be responsible for the damage caused by the fault or offenses committed by their minor children, and which are clearly due to bad education, or to vicious habits which they have permitted them to acquire.

ART. 2349. Masters shall be responsible for the damage caused by their domestics or servants, on the occasion of a service rendered by the latter to the former; but they shall not be responsible if it be proved or appear that on such occasion the domestics or servants conducted themselves in an improper manner, which the masters had no means to foresee or prevent by the employment of ordinary care and the competent authority; in such case all responsibility for the damage shall fall upon said domestics or servants.

ART. 2350. The owner of a building is liable for the damage caused by its collapse, due to the omission of the necessary repairs, or through having otherwise failed to observe the care of a good father of a family.

There shall be no liability if the collapse should be due to a fortuitous event, such as a flood, lightning, or earthquake.

If the building should belong to two or more persons *pro indiviso*, the indemnity shall be divided among them, in proportion to their quotas in the ownership.

1003, 64.

ART. 2351. If the damage caused by the collapse of a building should be due to a defect in construction, the liability prescribed in rule 3 of article 2060 shall lie.

ART. 2352. The persons bound to repair the damage caused by those under their dependency, shall have the right to recover upon the property of the latter, if there be any, and if he who shall have caused the damage did so without any order from the person to whom he owed obedience, and was capable of committing the offense or fault, according to article 2346.

ART. 2353. The owner of an animal is responsible for the damage caused by said animal, even after the animal shall have been turned loose or strayed, unless the turning loose, straying or damage cannot be charged to the fault of the owner or of the employee, charged with the care or service of the animal.

What is said of the owner applies to any person using an animal belonging to another; reserving his action against the owner if the damage shall have been due to a quality or vice of the animal, which the owner, with average care or prudence, should have known or foreseen, and of which he did not inform him.

ART. 2354. The damage caused by a wild animal, which is not useful in the care or service of a tenement, shall always be imputable to the one who has it; and if he should plead that it was not possible for him to avoid the danger, he shall not be heard.

ART. 2355. The damage caused by a thing which falls or is thrown from the upper part of a building, is imputable to all the persons occupying the same part of the building, and the indemnity shall be divided among all of them, unless it be proved that the act was due to the fault or evil intentions of one person exclusively, in which case such person only shall be responsible.

If there should be anything which from the upper part of a building, or any other high location, is threatening to fall or cause damage, the owner of the building or of the place, or its tenant, or the person to whom the thing may belong, or who may make use thereof, may be obliged to remove it, and any resident shall have the right to demand such removal.

1590 par. 2, 988 *et seq.*

ART. 2356. As a general rule, any damage which may be imputable to malice or negligence on the part of another person, must be repaired by such person.

The following are especially obliged to this repair:

1. He who shall imprudently discharge a firearm.
2. He who shall remove the covering from a ditch or drain, or shall uncover them in a street or road, without the precautions necessary to prevent persons passing thereby from falling.
3. He who being obliged to construct or repair an aqueduct or drain, which crosses a road, shall keep it in a state to cause damage to those passing along the road.

ART. 2357. The measure of damages is subject to reduction if he who suffered it shall have exposed himself thereto imprudently.

ART. 2358. The actions for the repair of the damage arising from an offense or fault, which may be brought against those who may be punishable for the offense or fault, prescribe within the terms fixed in the Penal Code for the prescription of the principal penalty.

The actions for the repair of the damage which can be exercised against third responsible persons, in accordance with the provisions of this chapter, prescribe in three years from the date of the perpetration of the act.

ART. 2359. As a general rule, a right of action exists in all cases of contingent damage, which shall threaten indeterminate persons through the imprudence or negligence of some one; but if the damage should threaten determinate persons only, the latter only can bring the action.

1005.

ART. 2360. If the popular actions to which the preceding articles give a right, be declared well taken, the plaintiff shall be indemnified for all the costs of the action, and he shall be paid the value of the time and the diligence employed therein, without prejudice to the specific remuneration which the law may grant in certain cases.

1005.

TITLE XXXV.

Of Suretyship.*

CHAPTER I.

Of the Constitution and Requisites of Suretyship.

ART. 2361. Suretyship is an accessory obligation, by virtue of which one or more persons answer for the obligation of another, binding themselves to the creditor to perform it in whole or in part, if the principal debtor fails to perform it.

The suretyship may be constituted not only in favor of the principal debtor, but of another surety.

65, 2410, 2383, 2384.

ART. 2362. Suretyship may be conventional, legal or judicial.

The first is constituted by a contract, the second is ordered by the law, and the third by a decree of a Judge.

Legal and judicial suretyship are subject to the same rules as conventional suretyship, unless the law requiring it or the Judicial Code shall dispose otherwise.

ART. 2363. The person obliged to furnish security cannot substitute therefor a mortgage or pledge, or vice versa, against the will of the creditor.

If the security be required by the law or a decree of the Judge, a sufficient pledge or mortgage may be substituted therefor.

466, 605.

ART. 2364. The obligation to which the security is accessory may be civil or natural.

1504 par. 2, 1527 *et seq.*

ART. 2365. Not only a pure and simple obligation, but a conditional and limited one may be the subject of suretyship.

A future obligation may also be secured; in such case the surety may withdraw as long as the principal obligation does not exist, but shall remain, nevertheless, responsible to the creditors and third persons in good faith, as the principal in a mandate in the case of article 2199.

2385 last par.

* See La. Civil Code, arts. 3035 [3004] to 3044 [3013].

ART. 2366. The security may be executed to or from a certain day or under a suspensive or resolutive condition.

ART. 2367. The surety may agree with the debtor upon a pecuniary remuneration for the service which he renders him.

ART. 2368. Any person may bind himself as surety for another, with the following exceptions:

1. Minors.
2. The violently insane, prodigals, deaf-mutes, and imbeciles.
3. Married women.

493, 1502, 180 *et seq.*, 1805 *et seq.*

ART. 2369. A surety cannot bind himself to more than what the principal debtor owes, but he may bind himself to less.

He may bind himself to pay a sum of money in place of another thing of equal or greater value.

By securing the act of another, there is secured only the indemnity to be recovered in the event of the non-performance of the act.

The obligation to pay a thing which is not money in the place of another thing, or of a sum of money, does not constitute security.

ART. 2370. The surety cannot bind himself under more onerous terms than the principal debtor, neither with regard to the amount, nor with regard to time, place, the condition or mode of payment, or the penalty imposed for the non-performance of the contract to which the security is accessory, but he may bind himself under less onerous terms.

He may, nevertheless, bind himself in a more efficient manner, for example, by mortgage, even though the principal obligation should not involve one.

The security which is excessive under any of the respects mentioned in the first paragraph, must be reduced to the terms of the principal obligation.

In case of doubt, the most favorable interpretation for the agreement of the principal and accessory obligations shall be accepted.

ART. 2371. Suretyship may be given without an order and even without notice, and against the will of the principal debtor.

1631, 1632, 2394 No. 5 par. 2.

ART. 2372. Surety may be given for a juristic person and a vacant inheritance.

ART. 2373. Suretyship is not presumed, nor must it be extended to more than the tenor of what is expressed; but it is supposed to comprise all the accessories of the debt, such as the interest, the judicial costs of the first demand made on the principal debtor, those of the intimation made in consequence to the surety, and all those subsequent to such

intimation; but not those caused during the time intervening between the first demand and the aforesaid intimation.*

1450, 1603, 1629, 2160, 2386.

ART. 2374. The following are obliged to furnish security on the petition of the creditor:

1. The debtor who may have stipulated it.
2. The debtor whose means diminish in such manner as to manifestly endanger the fulfillment of his obligation.
3. The debtor regarding whom there is fear that he will absent himself from the Territory, with the intention of establishing himself elsewhere, provided he does not leave sufficient property for the security of his obligations.

1553, 2394, 1882 last par.

ART. 2375. Whenever the surety given by the debtor should become insolvent, the debtor shall be obliged to furnish new security.

1553, 2416, 2451, 2385 last par.

ART. 2376. He who is obliged to give security must furnish a surety capable of binding himself as such; having property more than sufficient to cover the same, and who may be domiciled or shall select a domicile in some State or Territory of the Union.

In order to qualify the sufficiency of the property, there shall be taken into consideration only the immovables, excepting in commercial matters, or when the debt secured is a moderate one.

But there shall not be taken into consideration the attached or litigious immovables, or those which are not situated in the Territory, or which may be subject to onerous mortgages or to resolutive conditions.

If the debtor† should be so in debt as to endanger even the immovables not subject to mortgages in favor of such debts, neither shall the latter be taken into consideration.

2385.

ART. 2377. The surety is responsible to the extent of an ordinary fault as to all the prestations to which he may be bound.

ART. 2378. The rights and obligations of the sureties are transmissible to their heirs.

* *Intimation*: A notification to a party that some step in a legal proceeding is asked or will be taken. Particularly, a notice given by the party taking an appeal, to the other party, that the court above will hear the appeal. (Black's Law Dictionary.)

† The Code of Cundinamarca properly says: "If the surety should be so in debt . . ."

CHAPTER 2.

Of the Effects of Suretyship Between the Creditor and the Surety.

ART. 2379. The surety may make the payment of the debt even before being reconvened by the creditor, in all cases in which the principal debtor could do so.

1554, 2229, 2398.

ART. 2380. The surety may oppose to the creditor any real exceptions, such as fraud, violence or *res judicata*; but not the personal ones of the debtor, such as his incapacity to bind himself, cession of property, or the right which he may have not to be deprived of necessities for subsistence.

Real exceptions are those inherent to the principal obligation.

2516, 1577, 1504 par. 2, 1682, 1964, 2404, 2364, 1684, 1685.

ART. 2381. When the creditor shall have placed the surety in a position of not being able to subrogate himself in his actions against the principal debtor or against the co-sureties, the surety shall have the right to have deducted from the demand of the creditor all that said surety might have been able to obtain from the principal debtor or from the co-sureties by means of legal subrogation.

2390, 2406 No. 2, 1708.

ART. 2382. Even though the surety be not reconvened, he may have notice served upon the creditor, after the debt shall be demandable, to institute proceedings against the principal debtor; and if the creditor after such notice should delay doing so, the surety shall not be responsible by reason of the insolvency of the principal debtor occurring during the delay.

ART. 2383. The surety reconvened, enjoys the *benefit of discussion* (*beneficio de excusión*)*, by virtue of which he may demand that before proceeding against him, the debt be recovered from the property of the principal debtor and the mortgages or pledges given by the latter for the security of the same debt.

2454 last par.

ART. 2384. In order to enjoy the *benefit of discussion*, the following conditions are necessary:

1. That it shall not have been expressly renounced.
2. That the surety shall not have bound himself as a debtor *in solidum*.
3. That the principal obligation produces a right of action.
4. That the security shall not have been ordered by the Judge.

* See La. Civil Code, arts. 3045 [3014] to 3048 [3017] and 3051 [3020].

5. That the benefit be pleaded as soon as the surety is notified, unless the debtor, at the time of the notice, shall not have property, but acquires it later.

6. That the property of the principal debtor be pointed out to the creditor.

2361, 1568 last par., 1504, 1527 par. 3.

ART. 2385. There shall not be taken into consideration for the discussion:

1. The property situated without the Territory or domicile of the debtor.

2. Attached or litigious property, or credits of doubtful or difficult collection.

3. Property the ownership of which is subject to a resolutory condition.

4. Property mortgaged in favor of preferred debts in that part which may appear necessary for the full payment of the latter.

By the renunciation of the principal surety, the renunciation of the sub-surety shall not be presumed.

2376, 2365, 2391.

ART. 2386. The creditor shall have the right that the surety advance him the costs of the discussion.

The Judge, in a necessary case, shall fix the amount of the advance, and shall appoint the person to whose possession it shall be consigned, who may be the creditor himself.

If the surety should prefer to carry out the discussion himself, within a reasonable term, he shall be heard.

ART. 2387. When several principal debtors shall have bound themselves solidarily, and one of them shall have given security, the surety reconvened shall be entitled not only to the discussion of the property of such debtor, but also to that of his co-debtors.

ART. 2388. The benefit of discussion may be pleaded once only.

If the discussion of the property pointed out once by the surety should not produce any effect, or not be sufficient, he cannot point out other property; unless it shall have been subsequently acquired by the principal debtor.

2384 No. 5.

ART. 2389. If the property discussed should not produce more than a partial payment of the debt, the creditor shall nevertheless be obliged to accept it, and cannot reconvene the surety except for the unpaid portion.

ART. 2390. If the creditor be guilty of omission or negligence in the discussion, and the debtor in the meantime becomes insolvent, the

surety shall be liable only to the amount exceeding the value of the property which he may have pointed out for discussion,

If the surety, expressly and unequivocally, should have bound himself to pay only the amount the creditor should fail to obtain from the debtor, it shall be understood that the creditor is bound to the discussion, and the surety shall not be responsible for the insolvency of the debtor, if the following conditions are attendant:

1. That the creditor shall have had means sufficient to enforce payment.
2. That he shall have been negligent in availing himself thereof.

2382.

ART. 2391. The sub-surety enjoys the benefit of discussion, with regard to the surety as well as the principal debtor.

2365 par. 2, 2405.

ART. 2392. If there should be two or more sureties of the same debt, who shall not have bound themselves *in solidum* for the payment, the debt shall be understood as divided among them, in equal parts, and the creditor can demand of none more than his respective quota.

The insolvency of one surety shall be a charge upon the co-sureties; but a surety shall not be considered as insolvent, when his sub-surety is not.

A surety who shall have unequivocally limited his liability to a determinate sum or quota, shall not be liable beyond said sum or quota.

1568 par. 2, 2405.

ART. 2393. The division prescribed in the preceding article shall take place among the sureties of the same debtor, and for the same debt, even though the securities shall have been given separately.

CHAPTER 3.

Of the Effects of the Suretyship Between the Surety and the Debtor.

ART. 2394. The surety shall have the right to be relieved by the principal debtor, or that the latter give him a bond for the results of the security, or consign means of payment in the following cases:

1. When the principal debtor shall dissipate or recklessly risk his property.
2. When the principal debtor shall have bound himself to obtain the relief of the security within a certain term, and such term shall have expired.
3. When the term or the condition making the principal obligation immediately demandable in whole or in part shall have arrived.

4. If ten years shall have elapsed since the execution of the security; unless the principal obligation shall have been contracted for a longer determinate period or is of those which are not subject to extinguishment in a determinate period, as that of tutors and curators, that of the usufructuary, that of a life annuity, that of the employees in the collection or administration of public revenues.

5. If there be good reason to fear that the principal debtor may abscond, not leaving sufficient real property for the payment of the debt.

The rights herein granted the surety do not extend to him who shall have furnished the security against the will of the debtor.

65, 2374, 1632, 2371.

ART. 2395. The surety shall have a right of action against the principal debtor, for the reimbursement of what may have been paid by him with interest and costs, even though the suretyship shall have been unknown to the debtor.

He shall also be entitled to the recovery of damages, according to the general rules.

But he cannot demand the reimbursement of the unconsidered costs, nor those incurred before notice shall have been served upon the principal debtor of the suit brought against said surety.

1617 No. 3, 2235, 2308, 2309, 1631, 1668 No. 3.

ART. 2396. When the security shall have been given by direction of a third person, the surety who shall have paid shall have a right of action against the person so directing; without prejudice to that which may lie against the principal debtor.

2184 Nos. 2 and 5.

ART. 2397. Should there be many principal and solidary debtors, he who shall have furnished security for all may sue each of them for the total amount of the debt, according to the terms of article 2395; but the special surety of one of them may sue him only for the entire amount; and shall have against the others only the rights of action corresponding to him, as subrogated in those of the debtor whom he may have secured.

1571, 1668, 2312.

ART. 2398. A surety who shall have paid before the expiration of the term of the principal obligation, cannot reconvene the debtor, until after the expiration of the term.

2379, 1709.

ART. 2399. The surety, whose debt may have been remitted in whole or in part by the creditor, cannot sue the debtor for the amount remitted, unless the creditor shall have assigned him his right of action for the purpose.

ART. 2400. The actions granted by article 2395, shall not lie in the following cases:

1. When the obligation of the principal debtor is a purely natural one, and shall not have been validated by ratification or the lapse of time.
2. When the surety bound himself against the will of the principal debtor; except in so far as the debt may have been extinguished, and without prejudice to the right of the surety to sue the proper persons, according to the general rules.
3. When by reason of the payment of the surety not having been valid, the debt has not been extinguished.

1527, 1632, 2309.

ART. 2401. The debtor who shall have paid without advising the surety, shall be liable to the latter for what, not knowing of the extinction of the debt, he may again pay; but he shall have a right of action against the creditor for the recovery of the improper payment.

2313.

ART. 2402. If the surety shall have paid without advising the debtor, the latter may oppose to him all the exceptions of which the said debtor could have availed himself against the creditor at the time of the payment.

If the debtor, not being aware of the extinction of the debt by reason of failure to receive notice, should pay it again, the surety shall have no remedy against him, but he may bring against the creditor the action of the debtor for the improper payment.

CHAPTER 4.

Of the Effects of the Surety Among the Co-Sureties.

ART. 2403. A surety who pays more than his corresponding share, is subrogated as to the excess in the rights of the creditor against the co-sureties.

1668.

ART. 2404. The co-sureties cannot oppose to the person who has paid, the purely personal exceptions of the principal debtor.

Nor can they oppose to the co-surety who has paid, the purely personal exceptions corresponding to the latter against the creditor, and of which he did not wish to avail himself.

2380.

ART. 2405. The sub-surety, in the event of the insolvency of the surety in whose favor he bound himself, is liable for the obligations of the latter to the other sureties.

2391, 2392.

CHAPTER 5.

Of the Extinction of Suretyship.

ART. 2406. The suretyship is extinguished in whole or in part, in the same terms as other obligations, according to the general rules, and in addition:

1. By the discharge of the security in whole or in part, granted by the creditor to the surety.
2. In so far as the creditor by his own act or fault shall have lost the rights of action in which the surety had the right to be subrogated.
3. By the extinction of the principal obligation in whole or in part.

1576, 1704, 1708, 2381.

ART. 2407. If the creditor shall voluntarily accept of the principal debtor, in discharge of the debt, an object distinct from that which said debtor was obliged to give him in payment, the surety is irrevocably extinguished, even though subsequently eviction of the object should occur.

1627, 1687.

ART. 2408. The surety is extinguished by the confusion of the qualities of creditor and surety, or of debtor and surety; but in the latter case the obligation of the sub-surety shall subsist.

1724, 2431 par. 2.

TITLE XXXVI.

Of the Contract of Pledge.

ART. 2409. By the contract of *pawn* or *pledge* a movable is delivered to a creditor for the security of his credit.

The thing delivered is called *pledge*.

The creditor who holds it is called *pledgee*.

2497 No. 3, 786, 2432.

ART. 2410. The contract of pledge always supposes a principal obligation to which it is accessory.

65, 2361.

ART. 2411. This contract is perfected only by the delivery of the pledge to the creditor.

754.

ART. 2412. A thing can be pledged only by the person who has the power to alienate it.

1521, 1871, 2158, 2169, 2439.

ART. 2413. The pledge may be constituted not only by the debtor, but by any third person who renders this service to the debtor.

2439 par. 2.

ART. 2414. A credit may be given in pledge, by delivering the title, but it shall be necessary that the creditor notify thereof the debtor of the credit appearing in the title, forbidding him from paying it into other hands.

1960, 1961. 33 of law 57 of 1887.

ART. 2415. If the pledge does not belong to the person giving it, but to a third person who has not consented to the pledge, the contract shall nevertheless subsist as long as the owner does not reclaim it; unless the creditor shall know that it was stolen, or taken by force or lost, in which case the provisions of article 2208 shall be applied to the pledge.

1871, 1874.

ART. 2416. If the owner shall demand the thing pledged without his consent, and restitution should be made, the creditor may demand that

another pledge of the same or of a greater value be given him, or that other sufficient security be furnished; and in the absence of either, that the principal obligation be performed at once, even though a period for the payment may still be pending.

2375, 2431 last par., 1484, 1553, 65.

ART. 2417. Nothing whatsoever can be taken from the debtor against his will to serve as a pledge, excepting by the operation of law.

Nothing belonging to the debtor can be retained as security for the debt, without his consent; excepting in the cases expressly prescribed by law.

970, 859, 1995, 2000 par. 2, 2188, 2218, 2258, 2277, 2429.

ART. 2418. If the creditor lose the seizin of the pledge, he shall have a right of action for its recovery against any person in whose possession it may be, without excepting the debtor who has constituted it.

But the debtor may retain the pledge upon paying in full the debt, for the security of which it was constituted.

Upon this payment being made, the creditor cannot demand it under the plea of other credits, even though they shall have the requisites enumerated in article 2426.

775, 786, 665, 950, 2342, 2429.

ART. 2419. The creditor is obliged to keep and preserve the thing as a good father of a family, and is responsible for the deterioration the pledge may have suffered through his act or fault.

63 par. 4.

ART. 2420. The creditor cannot make use of the pledge without the consent of the debtor. In this respect his obligations are the same as those of a mere depositary.

2245.

ART. 2421. The debtor cannot demand the restitution of the pledge in whole or in part, until he shall have paid the debt in full, both principal and interest, as well as the necessary expenses which the creditor may have incurred for the preservation of the thing, and the prejudices which the seizin may have caused him.

Nevertheless, if the debtor should request that he be permitted to replace the pledge by another, without prejudice to the creditor, he shall be heard.

And if the creditor should abuse thereof, he shall lose his right of pledge, and the debtor may demand the immediate return of the thing pledged.

2258, 1603, 1546.

ART. 2422. The pledgee shall have the right to demand that the pledge of a debtor in default be sold at public auction, in order that he may be paid from the proceeds of the sale; or that, in the absence of an acceptable bid, it be appraised by experts and adjudicated to him in payment, to the extent of his credit; without any stipulation to the contrary being valid, and without prejudice to his right to recover the principal obligation by other methods.

Nor can it be stipulated that the creditor shall have the power to dispose of the pledge, or to appropriate it to himself by other means than those herein pointed out.

ART. 2423. Both the creditor and the debtor may be admitted at the auction of the pledge at public sale.

ART. 2424. Until the sale shall have been consummated and the adjudication* made as prescribed in article 2422, the debtor may pay the debt, provided the payment be in full, and there be included therein the expenses which the sale or the award may already have occasioned.

2450.

ART. 2425. If the value of the thing pledged shall not exceed one hundred and fifty pesos, the Judge may, on the petition of the creditor, adjudicate it to him at its appraised value, without the sale thereof being held.

ART. 2426. The credit having been discharged in all its parts, the pledge must be returned.

But the creditor may retain it if he shall have other credits against the same debtor, provided the following requisites are present:

1. That they be certain and liquidated.
2. That they shall have been contracted after the obligation for which the pledge has been constituted.
3. That they shall have become demandable before the payment of the previous obligation.

2418.

ART. 2427. If the pledge having been sold or adjudicated the price should not be sufficient to cover the debt in full, it shall be imputed first to the interest and costs; and if the pledge should have been constituted

* The Code of Chile says: "Until the sale shall have been consummated or the adjudication made . . ."

for the security of two or more obligations, or if constituted in favor of one only, it should subsequently have been extended to others, according to the preceding article, the imputation shall be made in accordance with the rules given in the *Title Of the manner of extinguishing obligations*, Chapter *Of the imputation of payment*.

1653, 1654, 1655.

ART. 2428. The creditor is obliged to return the pledge with the increase which it may have received by nature or time. If the pledge shall have produced fruits, he may impute them to the payment of the debt, giving an account thereof and answering for the surplus.

713 *et seq.*, 2253.

ART. 2429. If the debtor should sell the thing pledged, the purchaser shall have the right to demand its delivery of the creditor, upon the payment or consignment of the amount of the debt for which the pledge was expressly contracted.

A similar right is granted to the person upon whom the debtor may have conferred an onerous title for the enjoyment or seizin of the pledge.

In none of these cases can the first creditor avoid restitution, by pleading other credits, even with the requisites mentioned in article 2426.

2440, 2497 No. 3, 2418.

ART. 2430. A pledge is indivisible. Consequently the heir who shall have paid his share of the debt, cannot demand the return of a portion of the pledge, as long as any part whatsoever of the debt still exists; and mutually, the heir who shall have received his share of the credit, cannot remit the pledge, not even in part, until his co-heirs shall have been paid.

1583 No. 1, 2433.

ART. 2431. The right of pledge is extinguished by the complete destruction of the thing pledged.

It is likewise extinguished, when the ownership of the thing pledged passes to the creditor under any title whatsoever.

And when, by virtue of a resolutive condition, the ownership which the person who gave the thing in pledge had therein is lost; but the creditor in good faith shall have against the debtor who did not inform him of the condition, the same right as in the case of article 2416.

1186, 1724, 2408, 1553, 2441.

TITLE XXXVII.

Of Mortgage.

ART. 2432. A mortgage is a right of pledge constituted upon immovables which do not thereby cease to remain in the possession of the debtor.

2409, 665, 65.

ART. 2433. A mortgage is indivisible.

Consequently, each of the things mortgaged for a debt, and each part thereof are bound for the payment of the entire debt and for each part of the same.

1583 No. 1, 1598, 2430.

ART. 2434. A mortgage must be executed by a public instrument.

The mortgage and the contract to which it is accessory may be embodied in one and the same public instrument.

1760, 1758 par. 2.

ART. 2435. The mortgage must furthermore be recorded upon the Register of public instruments; without this requisite it shall have no value whatsoever; nor shall its date be counted before that of the record.

756, 2641 No. 3, 2652 No. 3, 2653, 2663 *et seq.*, 2673. 43, law 57 of 1887. 2 and 3, law 34 of 1887.

ART. 2436. Mortgage contracts celebrated without the Republic or a Territory shall produce a mortgage upon property situated at any point thereof or of the respective Territory, provided that they be recorded upon the proper Register.

ART. 2437. If the constitution of the mortgage suffers a relative nullity, and is subsequently validated by the lapse of time or by ratification the date of the mortgage shall always be that of the record.

1741, 1874.

ART. 2438. The mortgage may be executed subject to any condition and from or to a day certain.

If executed under a suspensive condition or from a day certain, it shall be valid only after the performance of the condition or from the arrival of the day; but upon the performance of the condition or the arrival of the day, its date shall be the same as that of the record.

It may also be executed at any time, before or after the contracts to

which it may be accessory; and it shall begin to run from the date of record.

ART. 2439. A mortgage may be constituted on property only by the person capable of alienating it and with the requisites necessary for its alienation.

The property of one person may be mortgaged for the security of the obligation of another; but no personal action against the owner shall lie, if he shall not have expressly subjected himself thereto.

1521, 2169, 2412, 2413, 2454.

ART. 2440. The owner of the property encumbered by a mortgage may at any time alienate or mortgage it, notwithstanding any stipulation to the contrary.

2022, 2319, 2429.

ART. 2441. He who shall have only an eventual, limited or rescindible right in the thing mortgaged, shall be understood to mortgage it only subject to the conditions and limitations to which the right may be subject; even though he should not so state.

If the right be subject to a resolutory condition, the provisions of article 1548 shall apply.

752, 2431 par. 3.

ART. 2442. A co-owner may, before the division of the thing held in common, mortgage his quota; but after the division shall have been made, the mortgage shall affect only the property which by reason of said quota may be adjudicated, if susceptible of mortgage. If not susceptible thereof, the mortgage shall lapse.

Nevertheless, the mortgage may subsist as to the property awarded to the other participants, if the latter should consent thereto, and it should so appear in a public instrument, of which a note shall be made in the margin of the mortgage record.

1868, 779, 1401, 2457 last par., 2608.

ART. 2443. A mortgage can be placed only upon real property possessed in ownership or usufruct, or upon vessels.

The special rules governing the mortgage of vessels, are embodied in the Code of Commerce.

ART. 2444. The mortgage of future property only gives the right to the creditor to have it recorded upon the immovables which the debtor may acquire subsequently, and as he acquires them.

ART. 2445. A mortgage constituted upon real property affects the movables which by accession thereto are considered immovables, ac-

ording to article 658; but does not affect them when they belong to third persons.

The mortgage extends to all the increases and improvements which the thing mortgaged may receive.

659, 661.

ART. 2446. The mortgage also extends to the payments received for the lease of the property mortgaged, and to the indemnity due by the underwriters of the same property.

ART. 2447. A mortgage upon a usufruct, or upon mines and quarries, does not extend to the fruits received, nor to the mineral substances, after their separation from the soil.

667.

ART. 2448. The mortgage creditor has, in order to secure payment upon the things mortgaged, the same rights as the pledgee upon the pledge.

2020 No. 3, 2499, 2422, 2497 No. 3.

ART. 2449. The exercise of a mortgage action does not prejudice the personal action of the creditor to secure payment upon the property of the debtor which has not been mortgaged to him; but the former does not communicate to the latter the right of preference corresponding to the first named.

ART. 2450. The owner of the estate proceeded against by the mortgage creditor, may abandon it to him, and before the adjudication shall have been consummated, he may recover it, upon payment of the amount for which the estate may have been bound, in addition to the costs and expenses which such abandonment may have caused the creditor.

2424.

ART. 2451. If the tenement should be lost or deteriorate, in such manner as not to be sufficient for the security of the debt, the creditor shall have the right to an increase of the mortgage, unless he consent to receive other security equivalent thereto; and in the absence of either, he may sue for the immediate payment of the liquidated debt, even though the term should be pending, or petition for the conservative measures of which the case may admit, if the debt be not liquidated, conditional or indeterminate.

1553, 2375, 2416.

ART. 2452. The mortgage gives the creditor the right to proceed against the tenement mortgaged, whoever be the possessor thereof, and under whatever title he shall have acquired it.

Nevertheless, this provision shall not apply to a third person who may have acquired the tenement mortgaged at a public sale ordered by the Judge.

But, in order that said exception may be valid in favor of a third person, the public sale must be held after a personal citation, according to the term of summons of creditors holding mortgages upon the same tenement; which shall be covered from the price of the sale, in their respective order.

The Judge, in the meantime, shall order the consignment of the money.

665, 2499, 952, 2020 No. 3.

ART. 2453. The third possessor reconvened for the payment of the mortgage constituted upon the tenement which afterwards passed to his hands with this charge, shall not have the right to proceedings being first instituted against the debtors personally obligated.

By making the payment, he becomes subrogated to the rights of the creditor in the same terms as a surety.

Should he be dispossessed of the tenement or abandon it, he shall be fully indemnified by the debtor, including the improvements he may have made thereon.

1668, No. 1, 2395.

ART. 2454. He who shall mortgage his own immovable for the debt of another shall not be considered as personally bound if this should not have been stipulated.

Whether he shall have bound himself personally or not, the rule contained in the preceding article shall be applied to him.

The security is called a mortgage security when the surety binds himself by a mortgage.

The mortgage security is subject with regard to a personal action to the rules governing a simple suretyship.

2439 par. 2, 2383, 2384.

ART. 2455. The mortgage may be limited to a specific sum, provided it be unequivocally expressed, but shall in no case extend to more than double the known or presumed amount of the principal obligation, even though this should so have been stipulated.

The debtor shall be entitled to a reduction in the mortgage to said amount; and upon its reduction, a new record shall be made at his cost, by virtue of which the first one shall not be valid beyond the amount which may be fixed in the second.

ART. 2456. The record of the mortgage must be made in accordance

with the terms prescribed in the Title *Of the registration of public instruments*.

756, 2641 No. 3, 2652 No. 3, 2653, 2663 *et seq.*, 2673. 43, law 57 of 1887. 2, law 34 of 1887.

ART. 2457. The mortgage is extinguished together with the principal obligation.

It is extinguished likewise by the resolution of the right of him who constituted it, or by the event of the resolutory condition, according to the legal rules. It is extinguished, furthermore, by the arrival of the day to which it may have been constituted.

And by the cancellation which the creditor may agree (*acordare*)* to in a public instrument, which shall be noted in the margin of the respective record.

2537, 2536, 2538 *et seq.*, 1758 par. 2, 1760, 2442 par. 2.

* The Code of Chile says: "and by the cancellation which the creditor may *execute* (*otorgare*) . . ."

TITLE XXXVIII.

Of Antichresis.*

ART. 2458. *Antichresis* is a contract by which there is delivered to the creditor real property in order that he may pay himself with its fruits.

ART. 2459. The real property may belong to the debtor or to a third person assenting to the antichresis.

ART. 2460. The contract of antichresis is perfected by the tradition of the immovable.

756, 1500.

ART. 2461. The antichresis alone does not give the creditor any real right in the thing delivered.

The provisions in favor of the lessee, in the case of art. 2020, apply to the antichresis creditor.

The antichresis shall not be valid as against real rights, nor leases previously constituted upon the tenement.

ART. 2462. There may be given to the creditor in antichresis the immovable previously mortgaged to the same creditor; and there may, likewise, be mortgaged in favor of the creditor, with the legal formalities and effects, an immovable which may have been given him in antichresis.

ART. 2463. The creditor who is in possession by way of antichresis, enjoys the same rights as the lessee for the payment of improvements, damages and expenses, and is subject to the same obligations as the lessee, with relation to the preservation of the thing.

1995, 1996 *et seq.*

ART. 2464. The creditor does not become the owner of the immovable in default of payment; nor shall he have any preference therein over the other creditors, excepting such as may be given him by the accessory mortgage contract, if there be any. Any stipulation to the contrary is null.

ART. 2465. If the credit should bear interest, the creditor shall have the right to the imputation of the fruits being first made to the same.

1653.

ART. 2466. The parties may stipulate that the fruits be offset with the interest, in full, or to the extent thereof.

The interest stipulated shall be subject, in case of lesion beyond a moiety, to the same reduction as in the case of mutuum.

2231.

* See La. Civil Code, arts. 3176 [3143] to 3181 [3148].

ART. 2467. The debtor cannot demand the restitution of the thing given in antichresis, until after the total extinction of the debt, but the creditor may restore it to him at any time, and seek to recover his credit by the other legal means; without prejudice to what may have been stipulated to the contrary.

ART. 2468. With regard to the judicial antichresis, or prætorian pledge, the provisions of the Judicial Code shall be observed.

TITLE XXXIX.

Of Transaction.*

ART. 2469. *Transaction* is a contract in which the parties extrajudicially terminate a pending lawsuit or prevent eventual litigation.

An act consisting only of the renunciation of a right not disputed is not a transaction.

ART. 2470. A person to transact must have the capacity to dispose of the objects included in the transaction.

489, 1502, 1503, 1504.

ART. 2471. Every mandatary requires a special power to transact.

In this power shall be specified the property, rights and actions regarding which it may be desired to transact.

2158 par. 2.

ART. 2472. The transaction may be of a civil action arising from a criminal offense; but without prejudice to the criminal action.

ART. 2473. A compromise as to the civil status of persons cannot be entered into.

15, 1523, 1526.

ART. 2474. The transaction on the future allowances for support to persons to whom they may be due by law, shall not be valid without judicial approval; nor can the Judge approve it if the provisions contained in articles 424 and 425 should be violated.

* See La. Civil Code, arts. 3071 [3038] to 3083 [3050].

ART. 2475. A transaction on the rights of others or on rights which do not exist, is not valid.

1397 par. 2, 1869, 1870.

ART. 2476. A transaction obtained by forged titles, and in general fraudulently or with violence, is null.

1515, 1513, 1514.

ART. 2477. A transaction entered into in consideration of a title which is null, is null in all its parts, unless the parties shall have expressly compromised on the nullity of the title.

ART. 2478. A transaction is likewise null if, at the time of celebration, the litigation were already concluded by a judgment having the force of *res judicata*, and of which the parties or any of them should not have had knowledge at the time of transacting.

ART. 2479. The transaction is presumed to have been accepted in consideration of the person with whom the transaction is entered into.

Hence, if it be believed that a compromise is being entered into with one person, and it actually is with another, the transaction may be rescinded.

In the same manner, if a compromise be entered into with the apparent possessor of a right, this transaction cannot be alleged against the person in whom the right really is vested.

66, 1512.

ART. 2480. An error as to the identity of the object on which it is desired to compromise, annuls the transaction.

1510, 1511.

ART. 2481. An error of calculation does not annul the transaction; it only gives a right to a correction of the calculation.

ART. 2482. If it shall appear from authentic titles that one of the parties had no right whatsoever to the object which has been the subject of the transaction, and these titles at the time of the transaction were unknown to the party whose rights they favor, the transaction may be rescinded; unless a special object shall not have been the subject thereof, but the entire controversy between the parties, and there were several objects of disagreement between them.

In such case, the subsequent discovery of unknown titles, shall not be a cause of rescission, excepting in so far as they shall have been fraudulently mislaid or concealed by the opposite party.

If the fraud should be with regard to one of the objects the subject of the transaction, the party prejudiced may demand the restitution of his right in said object.

1758, 1510.

ART. 2483. The transaction produces the effect of *res judicata* in last instance; but a declaration of nullity or rescission may be petitioned for, in accordance with the preceding articles.

765 pars. 5 and 6.

ART. 2484. The transaction produces its effects between the contracting parties only.

If there be a number of persons principally interested in the matter the subject of the transaction, the compromise assented to by one of them does not prejudice nor benefit the others; excepting, however, the effects of the novation in the case of solidarity.

1397 par. 2, 1583 No. 4, 1749, 1759, 1576, 1704.

ART. 2485. If the transaction involve one or more specific objects, the general renunciation of all rights, actions or claims, shall be understood only as to the rights, actions or claims relating to the thing or things the subject of the transaction.

ART. 2486. If a penalty shall have been stipulated against him who shall fail to carry out the transaction, the penalty shall lie, without prejudice to the transaction being carried out in all its parts.

1592 *et seq.*

ART. 2487. If one of the parties shall have renounced the right vested in him by virtue of a title, and subsequently shall acquire another title to the same object, the transaction does not deprive him of the right subsequently acquired.

TITLE XL.

Of the Preference of Credits.

ART. 2488. Every personal obligation gives the creditor the right to enforce its execution upon all the real property or movables of the debtor, whether present or future, excepting only that not subject to attachment designated in article 1677.

ART. 2489. In the things subject to identification which may belong to other persons by reason of ownership, in the possession of the insolvent debtor, the respective owners shall preserve their rights, without prejudice to the real rights of the debtor therein, as usufructuary or pledgee, or of the right of retention granted him by law; in all of which the creditors may be subrogated.

They may, likewise, be subrogated in the rights of the debtor, as lessor or lessee, according to the provisions of articles 2023 and 2026.

Nevertheless, neither the usufruct of the husband in the property of the wife, nor that of the father of a family in the property of the son, nor the real rights of use or of habitation, shall be subject to attachment.

862, 2000 and citations, 1670 par. 2, 1677 No. 9, 1792 No. 5, 1781 No. 2, 1806, 1809, 291.

ART. 2490. All acts executed by the debtor with relation to the property which he may have assigned, or by a debtor with regard to his bankruptcy assets, shall be null.

1521, 1633, 1636 No. 3, 1672.

ART. 2491. With regard to the acts executed before the cession of property or the institution of bankruptcy proceedings, the following provisions shall be observed:

1. The creditors shall have a right to have the onerous contracts rescinded, as well as the mortgagees, pledges, and antichreses which the debtor may have executed to their prejudice, both the transferer and the transferee acting in bad faith, that is, both being aware of the bad state of the affairs of the debtor.

2. The acts and contracts not included in the preceding number, including the remissions and agreements of discharge under a gratuitous title, shall be susceptible of rescission if the bad faith of the debtor and the prejudice of the creditors be established.

3. The actions granted in this article to the creditors, expire in one year, counted from the date of the act or contract.

862 par. 2, 1295, 1441, 1451.

ART. 2492. The creditors, with the exceptions indicated in article 1677, may demand that all the property of the debtor be sold to the extent of their credits, including the interest and costs of collection, in order that the same may be paid in full with the proceeds, if the property should be sufficient, and otherwise, *pro rata*, when there shall be no special causes to prefer certain credits, according to the following classifications:

1685 No. 6.

ART. 2493. The causes of preference are only a privilege and a mortgage.

These causes of preference are inherent in the credits, for the security of which they shall have been established, and pass with the same to all persons who acquire them by cession, subrogation or in any other manner.

1670.

ART. 2494. Credits of the first, second and fourth class are privileged.

ART. 2495. The first class of credits comprises those which result from the following causes:

1. The judicial costs incurred in the general interests of the creditors.
2. The necessary funeral expenses of the deceased debtor.
3. The expenses of the last illness of the debtor.

If the illness shall have lasted more than four months, the Judge shall, according to the circumstances, fix the sum to which the preference shall extend.

4. The wages of employees and servants for the last three months.
5. The necessary articles of subsistence furnished the debtor and his family during the last three months.

The Judge, on the petition of the creditors, shall have the power to estimate this charge if it appear to him exaggerated.

6. The credits of the Fisc and those of the Municipalities for fiscal or municipal imposts due.

1016.

ART. 2496. The credits enumerated in the preceding article, affect all the property of the debtor; and should there not be sufficient to cover them in full, they shall be preferred according to the order of their numeration whatever be their date, and those included in each number shall concur, *pro rata*.

The credits enumerated in the preceding article shall in no case pass against third possessors.

ART. 2497. To the second class of credits belong those of the persons enumerated herewith:

1. The innkeeper upon the effects of the debtor, brought by the latter into the inn, during his stay, and to the extent of what may be due him for lodging, expenses and damages.

2. The carrier or transportation agent upon the effects transported which he may have in his possession or in that of his agents or employees, to the extent of what may be due for the transportation, expenses and damages; provided that said effects are the property of the debtor.

It shall be presumed that they are the property of the debtor when the effects are brought by him into the inn, or transported for his account.

3. The pledge creditor on the pledge.

2075, 66, 2000 par. 2, 2258, 2417, 2429.

ART. 2498. If credits of the first and credits of the second class shall affect the same specific thing, the latter shall exclude the former; but if the rest of the property should be insufficient to cover the credits of the first class, the latter shall be preferred as to the deficit, and they shall participate in said specific thing, in the order and form indicated in the first paragraph of article 2495.

ART. 2499. The third class of credits comprises the mortgage creditors.

With regard to any tenement encumbered by a mortgage there may be instituted, on the petition of the respective creditors, or of any of them special bankruptcy proceedings in order that they may be paid immediately therewith, according to the order of the dates of their mortgages.

The mortgages of the same date encumbering one and the same tenement, shall be preferred to each other according to the order in which they may be recorded.

In these proceedings, the judicial costs caused therein shall first be paid.

2448, 2452, 2020 No. 3.

ART. 2500. The credits of the first class shall not be extended to the mortgaged tenements, excepting in case they cannot be covered in full with the other property of the debtor.

The deficit shall then be divided among the estates mortgaged in proportion to the value of the latter, and what may be due each shall be covered therewith, in the order and form stated in article 2495.

ART. 2501. The mortgage creditors shall not be obliged to await the results of the general bankruptcy proceedings in order to proceed to exercise their actions against the respective tenements: it shall be sufficient that they consign a reasonable sum for the payment of the credits of the first class, in the part falling to them, and that they return to the assets what may remain after their actions shall have been covered.

ART. 2502. The fourth class of credits comprises:

1. Those of the Fisc against the collectors, administrators and auctioneers of revenues and fiscal property.

2. Those of charitable or educational institutions, supported with public funds, and those of the community of the *corregimientos*, against the collectors, administrators and auctioneers of their property and revenues.

3. Those of married women for their property which the husband administers, upon the property of the latter.

4. Those of the children of the family for their property administered by the father, upon the property of the latter.

5. Those of the persons under tutorship or curatorship, against their respective tutors or curators.

6. Those of every ward, against the person marrying the mother or grandmother, tutrix or curatrix in the case of article 599.

180, 1805.

ART. 2503. The credits enumerated in the preceding article, indistinctively prefer each other according to the dates of their causes; which is:

The date of the appointment of administrators and collectors, or that of the public sale with regard to the credits of numbers 1 and 2.

That of the respective marriage in the credits of numbers 3 and 6.

That of the birth of the son in those of number 4.

That of the judicial confirmation of the tutorship or curatorship in those of number 5.

ART. 2504. The preferences of numbers 3, 4, 5 and 6, are understood as constituted in favor of the real property or real rights therein, which the wife may have brought to the marriage, or of the real property or real rights therein, belonging to the respective children of the family, and persons under tutorship or curatorship, and of which, the husband, father, tutor or curator may have had the seizin; and in favor of all the property in which the rights of the said persons are established by formal inventories, testaments, acts of partition, judgments of adjudication, public instruments of marriage agreements, of donation, sale or exchange, or others of similar authenticity.

The preference of the fourth class extends also to the rights and actions of the wife against the husband, or of the children of a family and persons under tutorship or curatorship, against their parents, tutors or curators, by reason of fault or fraud in the administration of the respective property, the charges being proved in any trustworthy manner.

ART. 2505. The confession of the bankrupt husband, father of a family or tutor or curator, shall not alone be proof against the creditors.

202, 1759, 1769, 1795 par. 2.

ART. 2506. The preferences of the credits of the fourth class affect all the property of the debtor, but do not produce a right of action against

third possessors, and only lie after the credits of the first three classes, of whatever date they may be, shall have been covered.

ART. 2507. The preferences of the first class to which the property of the deceased debtor may have been subject, shall affect in the same manner the property of the heir, unless the latter shall have accepted under the benefit of inventory, or that the creditors enjoy the benefit of separation, as in either case they shall affect only the property inventoried or separated.

The same rule shall be applied to the property* of the fourth class, which shall preserve their date upon all the property of the heir, when the benefits of inventory or separation do not lie, and shall only preserve it as to the property inventoried or separated, when the respective benefits do lie.

1155, 1302 par. 2, 1304, 1435.

ART. 2508. The law recognizes no other causes of preference than those established in the preceding articles.

ART. 2509. The fifth and last class comprises the property† which does not enjoy any preference.

The credits of the fifth class shall be covered *pro rata* from the balance of the insolvent estate, without consideration of their date.

ART. 2510. The preferred credits which cannot be covered in full by the means indicated in the preceding articles, shall pass for the deficit to the list of the property ‡ of the fifth class, in which they shall participate *pro rata*.

ART. 2511. Interest shall run to the date of the extinction of the debt, and shall be preferred as are the respective principals.

* The Code of Chile says “. . . The same rule shall be applied to the *credits* of the fourth class . . .”

† The Code of Chile says: “The fifth and last class comprises the *credits* which do not enjoy any preference.”

‡ The Code of Chile says: “. . . to the list of the *credits* of the fifth . . .”

TITLE XLI.

Of Prescription.

CHAPTER I.

Of Prescription in General.

ART. 2512. *Prescription* is a manner of acquiring the things of another, or of extinguishing another's actions or rights, by reason of having possessed the things, and said actions and rights not having been exercised during a certain lapse of time, and with the attendance of the other legal requisites.*

An action or right *prescribes* when it is extinguished by prescription.

762.

ART. 2513. He who shall desire to take advantage of prescription, must plead it; the Judge cannot declare it *ex proprio motu*.

1743.

ART. 2514. The prescription may be expressly or impliedly renounced; but only after having been acquired.

It is impliedly renounced, when he who is able to plead it manifests by an act that he recognizes the right of the owner or of the creditor; for example, when the legal conditions for prescription having been fulfilled, the possessor of the thing takes it in lease, or he who owes money pays interest or demands time.

66.

ART. 2515. The prescription can be renounced only by one capable of alienating.

ART. 2516. The surety may oppose to the creditor the prescription renounced by the principal debtor.

2380.

ART. 2517. The rules regarding prescription are applied equally in favor of and against the Nation, the Territory, municipalities, establishments and corporations and private individuals who have the free administration of their property.

2532, 2544, 2545.

*The Code of Chile says: " . . . of extinguishing another's actions *and* rights."

CHAPTER 2.

Of the Prescription by Which Things Are Acquired.

ART. 2518. The ownership of corporeal things, real or movable, which are the object of trade, and which have been possessed with the legal conditions, is acquired by prescription.

The other real rights not especially excepted are acquired in the same manner.

762, 939, 665.

ART. 2519. In no case is property of public use subject to prescription.

ART. 2520. The omission of acts of mere power, and the mere tolerance of acts which do not result in any charge, do not confer possession, nor do they give any basis for any prescription whatsoever.

Hence, he who shall have for a number of years not built upon land belonging to himself, does not by such action confer upon his neighbor the right to prevent him from building.

In the same manner, he who shall tolerate that the cattle of his neighbor pass through his vacant land, or graze thereon, does not thereby impose a right of way or servitude of pasture.

Acts of mere power are called those which any person may exercise in regard to his own property, without necessity of the consent of another.

2220 par. 2, 939, 676.

ART. 2521. If a thing shall have been possessed successively and without interruption, by two or more persons, the time of the previous possessor may or may not be added to the time of the successor, according to the provisions of article 778.

The possession begun by a deceased person continues in the vacant inheritance, which shall be understood to possess in the name of the heir.

1034.

ART. 2522. Uninterrupted possession is that which has not suffered any natural or civil interruption.

ART. 2523. The interruption is natural:

1. When without the possession having passed into other hands, the exercise of possessory acts shall have been made impossible, as when a tenement has been permanently flooded.

2. When the possession shall have been lost by reason of another having entered thereon.

The natural interruption of the first kind produces no other effect than that of deducting its duration; but the natural interruption of the

second kind causes all the time of the previous possession to be lost; unless possession shall have been legally recovered, in accordance with the provisions contained in the title on *possessory actions*, as in such case there shall not be considered that there was an interruption for the person dispossessed.

792.

ART. 2524. Civil interruption is any judicial remedy instituted by him who claims to be the real owner of the thing, against the possessor.

Only the person who shall have instituted this remedy may plead the interruption, and not even he in the following cases:

1. If notice of the suit shall not have been served in legal form.
2. If the complainant shall have expressly abandoned the suit, or ceased its prosecution for more than three years.

In these three cases the prescription shall not be considered as having been interrupted by the suit.*

ART. 2525. If the property belongs in common to various persons, he who shall interrupt the prescription with regard to one of them, does so also with regard to the others.

779, 943, 1586, 2540, 1749.

ART. 2526. The acquisitive prescription of real property or of real rights constituted therein does not obtain against a recorded title, except by virtue of another recorded title, nor shall it begin to run but from the date of the record of the second.

789.

ART. 2527. Acquisitive prescription is ordinary and extraordinary.

ART. 2528. To acquire the ordinary prescription, a regular uninterrupted possession, during such time as the laws require, shall be necessary.

764, 766.

ART. 2529. The time necessary for ordinary prescription is three years for movables, and ten years for real property.

Every two days shall be counted as one for absentees, in the computation of the years.

As present for the purposes of prescription are understood those who live in the territory, and as absent, those who reside in a foreign country.

939 par. 2, 753.

* In this article two cases only are established; the third of the corresponding article of the Code of Chile has been omitted, which is as follows: "Art. 2503. . . . 3. If the defendant shall have received a decision in his favor."

ART. 2530. Ordinary prescription may be *suspended* without being extinguished; in such case, the cause of the suspension ceasing, the time prior thereto, if there be any, shall be credited to the possessor.

Ordinary prescription is suspended in favor of the following persons:

1. Minors, the insane, deaf mutes, and all those who may be under paternal or marital power, or under tutorship or curatorship.

2. A vacant inheritance.

The prescription is not interrupted in favor of a divorced wife or one who is separate in property, with regard to that which she administers.

The prescription is always suspended between the spouses.

2541.

ART. 2531. The ownership of things in commerce, which shall not have been acquired by ordinary prescription, may be acquired by extraordinary prescription, under the following rules:

1. For the extraordinary prescription no title whatsoever is necessary.

2. Good faith is presumed therein of right notwithstanding the absence of a title acquisitive of ownership.

3. But the existence of a title of mere possession, shall cause bad faith to be presumed and shall not produce the prescription, unless the following two circumstances be present:

1. That he who claims to be the owner cannot prove that during the past thirty years his ownership shall have been acknowledged expressly or impliedly by the person pleading the prescription.

2. That he who pleads the prescription shall prove that he has had possession without violence, concealment, nor interruption for the same period of time.

66 par. 4, 775, 777, 1506 par. 2, 2539.

ART. 2532. The lapse of time necessary to acquire by this kind of prescription, is thirty years against any person, and is not suspended in favor of those enumerated in article 2530.

2541 par. 2.

ART. 2533. Real rights are acquired by prescription in the same manner as ownership, and are subject to the same rules with the following exceptions:

1. The right of inheritance is acquired by extraordinary prescription of thirty years.

2. The right of servitude is acquired according to article 939.

1032, 1267 par. 2, 1326.

ART. 2534. A judicial decision declaring a prescription shall take the place of a public instrument for the ownership of real property or of real rights constituted therein; but it shall not be valid against third persons, unless properly recorded.

758, 17.

CHAPTER 3.

Of Prescription as a Means of Extinguishing Judicial Actions.

ART. 2535. The prescription which extinguishes the actions and rights of others requires only the lapse of a certain time during which said actions shall not have been exercised.

This time shall be counted from the date the obligation shall have become demandable.

2300.

ART. 2536. An executory action prescribes by ten years, and the ordinary action by twenty.

An executory action is converted into an ordinary action after the lapse of ten years, and after having become converted into an ordinary one, shall last ten years more only.

125 of law 153 of 1887.

ART. 2537. A mortgage action and the other actions resulting from an accessory obligation, prescribe together with the obligation to which they are accessory.

2457.

ART. 2538. Any action claiming a right is extinguished by the acquisitive prescription of the same right.

ART. 2539. The prescription which extinguishes the actions of others, may be interrupted, either naturally or civilly.

It is interrupted naturally by the act of the debtor recognizing the obligation, either in an express or implied manner.

It is interrupted in a civil manner, by a judicial suit; reserving the cases enumerated in article 2524.

2531 last par.

ART. 2540. The interruption operating in favor of one of several co-creditors, does not benefit the others, nor does that which operates to the prejudice of one of several co-debtors, prejudice the others, unless

there shall be solidarity, and it shall not have been renounced in the terms of article 1573.

943, 1581, 1586, 2525, 1568 par. 2.

ART. 2541. The prescription which extinguishes obligations is suspended in favor of the persons enumerated in No. 1 of article 2530.

The suspensions mentioned in the preceding paragraph shall not be taken into consideration after the lapse of thirty years.

2532.

CHAPTER 4.

Of Certain Actions which Prescribe in a Short Time.

ART. 2542. The following are prescribed in three years: the judicial costs enumerated in title 7, book I of the Judicial Code of the Union,* including the counsel fees; those of physicians and surgeons; those of directors or professors of colleges and schools; those of engineers and surveyors, and in general those of persons who exercise any liberal profession.

ART. 2543. The action of tradesmen (*mercaderes*), general providers (*proveedores*), and artisans, for the price of the articles they sell at retail, prescribe in two years.

Also those of employees and servants for their wages.

Those of any persons for the price of services rendered periodically or accidentally, such as innkeepers, carriers, messengers, barbers, etc.

ART. 2544. The prescriptions mentioned in the two preceding articles, run against all persons whatsoever, and do not admit of suspension.

They are interrupted:

1. When a note or written obligation is given, or an extension of time by the creditor.

2. When a judicial notice is served.

In both cases the short prescription is followed by that of article 2536.

498, 2524, 2539.

ART. 2545. Prescriptions of a short time to which are subject special actions, resulting from certain acts or contracts, are mentioned in the respective titles, and run also against all persons; unless another rule be expressly established.

498.

* In the new edition (1887) this Title corresponds to Title VIII of Book I.

TITLE XLII.

Notaries Public in the Territories.

CHAPTER I.

ART. 2546. In the Territories which the General Government of the Union administers, there shall be notaries public, as established in the Administrative Code.

11 of law 14 of 1887. 6 of law 46 of 1887.

ART. 2547. The receipt, drafting and authentication of acts and contracts to which natural or judicial persons must or wish to give authenticity and make of public record, in accordance with law, are in charge of the Notary Public.

2576, 2577, 2579, 1758, 1759, 1760. 6, law 34 of 1887. 332,
law 57 of 1887.

ART. 2548. The portion of territory outlined for the exercise of notarial functions, is called a Notarial Circuit, and the place fixed for the location of the Notary's office, is the seat of the Notarial Circuit.

ART. 2549. The notaries are obliged to reside in the seat of the notarial circuit, from which they cannot absent themselves except in the exercise of their duties, and with permission of the Prefect or Corregidor, when the absence is to exceed twenty-four hours.

In cases of leave of absence, it shall be granted by the respective Prefect of the Territory, care being taken that as soon as the notary leaves the office, the official called upon to take his place, assume charge of the office.

11, law 14 of 1887. 6, law of 46 of 1887. 37 par. 2, of law 57
of 1887.

ART. 2550. The functions of the notariat may be exercised by each notary only within the jurisdiction of the respective notarial circuit; all acts and contracts authenticated by a notary beyond such jurisdiction, in his official capacity, are null.

ART. 2551. Each notary shall have a substitute who shall take his place in cases of absence or impediment.

If the absence be absolute, that is, when it causes a vacancy in the office, the substitute shall discharge the notarial duties until the appointment of a permanent notary in accordance with law.*

* See comment to art. 2562.

ART. 2552. Circuit notaries, both principal and substitute, shall be appointed in accordance with the provisions of the administrative code.

Impliedly repealed by art. 12, law 14, of 1887.

ART. 2553. In order to be eligible for appointment as a principal, substitute or provisional notary, it is necessary that the applicant be a citizen of well-known honesty.*

ART. 2554. Persons who have been sentenced to a grave penalty or to removal or suspension from public office, cannot be notaries.

ART. 2555. The office of notary is incompatible with any other office in the Union.

4 par. 2, 93, law 61 of 1861. Laws 7 and 129 of 1887.

ART. 2556. Notaries are forbidden to assume the private or official management of the business of others. In cases of a violation of this provision, the respective officials shall prepare the proper papers and transmit them to the judge of competent jurisdiction or to the Prefect.

ART. 2557. The term of office for notaries shall be two years, from January 1st following their appointment, and they may be reappointed.

ART. 2558. Notaries shall have their offices in the most public places of the town where they reside.

ART. 2559. Notaries shall have the office hours which the respective Prefect may fix, and shall make the same public by posters, one of which shall be affixed to the door of their offices.

During the hours fixed as office hours, notaries are obliged to serve the persons calling upon them and they shall be liable to the parties or persons interested for any loss which they may suffer through a failure to draft or authenticate in due time the instruments or papers in which notaries must take part, if said failure be due to the absence of the notary during office hours or to another act chargeable to him.

37 par. 2, law 57 of 1887.

ART. 2560. Notaries are also obliged to discharge their functions outside of their offices, but within the territory which is comprised in the seat of the notarial circuit, on any days and at any hours they may be called upon by persons physically incapable of going to the notarial office, or when urgent cases are involved in which delay would be prejudicial.

ART. 2561. With the exception of the cases mentioned in the two preceding articles, notaries are not obliged to act, although they may do so voluntarily.

ART. 2562. Notaries are forbidden to authenticate instruments pecu-

* Provisional notaries, referred to in this article, have not been provided for by the law.

liar to their profession which may result in some direct advantage to the authenticating notaries, or their ascendants, descendants or brothers, and the spouses of either, or the wife of the notary, the ascendants, descendants or brothers of said wife.

The clauses from which the direct advantage results shall be null and of no value and effect in any of the cases of prohibition referred to in the preceding paragraph; the other provisions of the deed or instrument shall not be annulled for the reason stated; excepting the liability which the offending notary may incur.

CHAPTER 2.

Books to be Kept by Notaries.

ART. 2563. Notaries shall keep two books, the first to be called the Memorandum book (*minutario*), and the second, the Protocol.

2570.

ART. 2564. The memorandum book shall be a book of ordinary paper, bound and foliated. At the beginning there shall be a note subscribed by the full signature of the notary, stating the number of folios it contains.

The period covered by the memorandum book is the same as that of the respective protocol.

2571, 2569.

ART. 2565. The purpose of the memorandum book is to enter therein a succinct statement of the clause and conditions of the acts or contracts which are intrusted by the persons interested to the notaries for drafting.

2567, 2568.

ART. 2566. The notes made in the memorandum book must form a series, that is to say, an orderly and successive continuation, without large blank spaces between them.

ART. 2567. An entry in the memorandum book shall be made when the person interested requires it, in which event they and the notary shall sign the entry with their full names.

ART. 2568. When the entries in the memorandum book have been signed by the parties in interest, they have the legal value of private documents, provided that there are no words in said entries that have been erased, corrected or inserted which change the meaning, and that any of the persons interested denies that when he signed it, the insertion, correction or erasure was present.

2567, 1761. 89 law 153 of 1887.

ART. 2569. The memorandum book is closed upon the expiration of the term which it covers by means of a note of the date of closing and of the number of entries contained therein. This note shall be signed with the full signature of the notary.

2564 par. 2.

ART. 2570. The protocol is the book made up of the original instruments drafted by the notary, and of those which the law or a magistrate orders embodied therein.

2576, 2606, 2607.

ART. 2571. The period covered by or the duration of a protocol, is one calendar year.

ART. 2572. When in view of the number of instruments passing before a notary, during the term mentioned, he should be of opinion that the final formation of a single volume of the protocol would be unhandy on account of its size, during said term two or more protocols may be opened which shall be called first, second, etc.

ART. 2573. Whether a new protocol is opened, as permitted by the provisions of the preceding article, or the term of the protocol has concluded, the preceding protocol shall be foliated and at the end thereof a closing memorandum shall be made, with the full subscription of the respective Prefect or Corregidor and the notary, stating the dates and the contents of the first and last of the instruments contained in the protocol, the number of written folios and the total number of instruments, stating the number in force, the number cancelled, and the number left unsigned by the parties.

The closing note referred to shall be made within four days after the new protocol is opened, and not more than eight days later the previous protocol must be sewn and bound in paper or board. At the end of the volume the number of blank sheets of paper shall be placed which may be considered necessary for the preparation of the index referred to in the following paragraph, this work being done before the notary and under his liability.

After the protocol shall have been thus formed, a chronological index of the instruments shall be made at the end, stating the names of the contracting parties and the general contents of each instrument, mentioning those in force, those cancelled, and those left unsigned by the parties, with references to the corresponding folios. This index, which must be concluded within a period not exceeding eight days from the date of the binding of the protocol, shall also be signed with the full signatures of the Prefect or Corregidor and by the notary, who shall prepare an authenticated copy thereof for transmission to the office of the Prefect.

ART. 2574. The protocols shall be guarded with the greatest care by the notaries, from whose offices they cannot be removed. If it should be necessary for the magistrate to make an ocular inspection of a protocol, he shall proceed with his secretary to the office of the respective notary for the purpose.

ART. 2575. It shall also be the duty of the notary to keep and take care of the register of the civil status of persons, in the manner prescribed in Title XX, Book I, of this Code.

CHAPTER 3.

Acts and Instruments Passing before Notaries and Copies which they Issue.

ART. 2576. The authentication of acts and contracts is placed by law in the hands of the notary, as also its confidence with regard to documents placed under the custody of the said notary. Consequently, it shall be his duty to make a record of the dates of such acts and contracts, the names of the persons who were parties thereto, and the character and nature of the said acts and contracts. He is also charged with the care of all instruments passing through his hands and of the papers and records which, by provision of law or order of the magistrate, are ordered embodied in the protocols of the notarial offices, or which are taken care of in such offices.

2547, 2570, 2606.

ART. 2577. Instruments which are executed before a notary and kept on file in the respective protocol, are public instruments.

1758 par. 2.

Therefore, acts and contracts relating to the alienation or conveyance of the ownership of real property and the constitution of mortgages, the imposition of any charge, responsibility or servitude, and generally all contracts or acts *inter vivos*, limiting the right of ownership in real property, must pass through the hands of or be executed before a notary, as well as other acts and contracts with regard to which the law requires that a record thereof be inserted in a public document or instrument.

1760 and citations.

ART. 2578. There must also be executed in every case before a notary, sealed or secret testaments, and also ordinary nuncupative testaments when in the place where the latter are made a notary can be easily secured.

1760 and citations, 1070, 1078.

ART. 2579. What has been said in the preceding articles, does not prevent the execution before a notary of acts and contracts which the parties desire be embodied in a public instrument, even though such a formality for acts or contracts shall not have been prescribed by law.

2547.

ART. 2580. The instruments drafted in the protocol must follow each other, without any blank or open spaces being left in the body of each instrument; but between the instrument preceding and the one following, such space as may be absolutely necessary may be left for the signatures to be affixed thereto, in the event that the respective instrument was not signed immediately after execution.

2594.

ART. 2581. All instruments drafted in a notarial office during the term of the books, shall be numbered consecutively, the number corresponding to the instrument being written out. This numeration shall be the first thing to be done when an instrument is drafted, and the numeration shall be continued in all the instruments drafted during one term, even though different protocols are made up therefrom.

2572, 2594.

ART. 2582. The dates and the amounts to be mentioned in instruments shall be written out and not inserted in figures.

Nevertheless, if after an amount has been written out, the parties to the instrument desire that the same amount be indicated immediately thereafter in figures, this may be done by setting down the respective numerals in parentheses immediately thereafter.

2594.

ART. 2583. The use of initials in the names and surnames of the parties and in the names of things, and abbreviations of the words in instruments, the erasure of what is written therein or the blotting out thereof rendering it impossible to read what had been written, is absolutely prohibited. Names, surnames and words must be written out in full, and when any error or mistake is committed, it shall be corrected or underlined, the words which it is desired to omit being placed in parentheses, and the words to be added being written between the lines.

In all the cases of this article, a note shall be made in the margin of the respective instrument opposite the correction, repeating in full the words corrected, underlined, or inserted, stating whether they are to stand or not, which note shall be signed with the full name of the parties, the attesting witnesses and the notary. If on

account of the large amount corrected, the note cannot be made in the margin, it shall be made at the end of the instrument; and if the instrument shall have already been signed, it shall be made immediately after the signatures and signed, as stated, by the parties thereto, the witnesses and the notary.

2586, 2594.

ART. 2584. In any case in which the notes referred to in the preceding article are not properly entered and signed, the corrections shall be void, and the original writing shall be given due credit, without prejudice to the enforcement of the liability which the notary may have incurred or the person who may have made the corrections.

2594.

ART. 2585. If after an instrument shall have been drafted it should remain unsigned, on account of the withdrawal of the parties thereto or for any other reason, the notary, without erasing the number which corresponds to the instrument, shall make and subscribe, with his whole signature, a statement at the foot of the said instrument, of the reason for the absence of signatures.

2594.

ART. 2586. Every act or contract which is to be filed in the protocol, must bear the full subscription of the parties thereto, of two male witnesses over twenty-one years of age, residing in the notarial circuit and of good credit, and of the notary, who shall authenticate all; the two witnesses are called *attesting witnesses*.

2583, 2587.

The attesting witnesses must be present when the instrument is read to the contracting parties, must hear that they approve it, and see that they sign the same.

If any of the contracting parties does not know how or cannot sign, a witness other than the attesting witnesses shall do so, provided such witness has the qualifications required of attesting witnesses.

2594.

ART. 2587. Attesting witnesses cannot be persons who are deprived of their reason or under a judicial interdiction from testifying, nor the ascendants, descendants, brothers, uncles, nephews, spouses, parents-in-law, or brothers and sisters in law of the contracting parties or of the notary, persons who receive a direct benefit from the instrument in question, and the subordinates, employees or servants of the contracting parties, of the notary and of the other persons mentioned in this article.

ART. 2588. With regard to the number and qualifications of the witnesses to testaments, the provisions of Title III, Book III, of this Code, shall be observed.

1070, 1078, 1071.

ART. 2589. The notary must be acquainted with the persons who desire his services; if he be not acquainted with them, he must not act, unless they present two known persons of good reputation, possessing the other qualifications required of attesting witnesses, who assure that they are acquainted with the contracting parties, and that their names are the ones they claim; these witnesses are called *witnesses of identification*. This circumstance shall be mentioned in the instrument, and the identification witnesses named, who shall subscribe the instrument together with the contracting parties, the attesting witnesses and the notary.

2586.

ART. 2590. Notaries are responsible only for the formal portion, and not for the substance of the acts or contracts they authorize.

Nevertheless, when an act or contract, or any clause of an act or contract, appears to them illegal, they must so inform the parties, without refusing the authentication in any case.

2547, 2576, 2595, 2608.

ART. 2591. Nor are the notaries responsible for the capacity or legal qualifications of the parties to the execution of the act or the celebration of the contract which they formulate; but they are responsible for the attesting witnesses, and, in a proper case, for the identification witnesses, having the qualifications required by law.

2586, 2589, 2592, 2593.

ART. 2592. Notwithstanding the provisions of the preceding article, if the notary should know that the contracting parties do not have the legal capacity or qualifications to enter into contracts alone, he shall so advise the said contracting parties; and if, this notwithstanding, they should insist upon the execution of the instrument, the notary shall draft and authenticate it, making a note in the instrument of the notice given the contracting parties and of their insistence.

2608.

ART. 2593. When the contracting parties themselves show to the notary their inability to bind themselves naturally, such as a person who has not reached the age of puberty, or to bind themselves civilly,

such as a person under legal age, a married woman in the cases where the authority of her husband is necessary, the notary shall not furnish his services for the execution of contracts.

Nor shall the notary furnish his services to a person of whom he has evidence that he is absolutely incapable of contracting, such as an insane person or a deaf and dumb person who cannot make himself understood in writing, which incapacities the notary himself observes at the time of the celebration of the contract, or to a person of whose incapacity the notary has official cognizance, such as a person who has been declared under judicial interdiction from administering his property by a judgment published in the press or legally communicated to the notary.

2591, 2592.

ART. 2594. As a general rule, instruments executed before a notary shall contain: the number corresponding to them in the series of instruments; the place and date of execution; the legal denomination of the notary before whom it is executed; the names and surnames, sex, residence and age of the contracting parties or of their legal representatives; juridical persons shall be designated by their legal or popular designation, or by the place of their establishment, and what has been said above regarding the legal representatives of natural persons, is made to apply to their representatives; the character or nature of the act or contract, with all the circumstances which clearly evidence the rights conferred and the obligations imposed, with a statement of the cautions or mortgages placed or charges or limitations imposed upon the right of ownership and the origin of the title of the conveyor.

Things and amounts shall be determined in an unequivocal manner, and if immovables are treated of in the instrument in a direct or indirect manner, a record of the situation thereof and of their bounds shall be made, and also if the real property be rural, its name and the district or districts in which it is situated; and, if urban, in addition, the street upon which located and the number of the property, if it have any.

The designation of the name, situation and boundaries of an estate shall be made, even though the alienation, mortgage, or encumbrance of a part of an estate held *pro indiviso* is in question. In such case, there shall be designated the name, situation and boundaries of the common estate, stating that it contains the part alienated, mortgaged or encumbered.

If a bond be involved in the contract, the attendance of the bondsman and the terms according to which he binds himself must be stated.

With regard to women, it shall be stated whether they are married or single, and, if married, whether they act with the permission of their husbands or of the Judge or Prefect in substitution, and whether they are legally divorced or their property is separate.

The entire statement shall be closed with the signatures of the contracting parties, of the other persons who may have participated in the act or contract, of the identification witnesses, in a proper case, of the attesting witnesses and of the notary.

A testament shall contain the designations prescribed in Book 3, Title III, on Testaments.

2580 to 2586.

ART. 2595. The following are substantial formalities in public instruments, and their absence invalidates the instrument, without prejudice to the legal causes for nullity of acts and contracts passing before notaries: the statement of the place and date of the execution; the legal denomination of the notary before whom they are executed; the names and surnames, sex, age, and residence of the contracting parties or of their legal representatives; the full signatures of the contracting parties, those of the identification witnesses, in a proper case, and those of the other persons who may have taken part in the act or contract, or of those who sign at the request of those who cannot or do not know how to sign; and the full signatures of the attesting witnesses and of the notary.*

ART. 2596. The contracting parties may draw the instrument themselves, containing the designations necessary, according to the character of the document, in which event the notary shall file the instrument given him, after adding thereto the proper heading and closing clause corresponding to the act or contract which the instrument embodies.

2594.

ART. 2597. If the drawing up of the instrument be entrusted to the notary by the persons interested, he shall draft it in simple terms, using words in their legal acceptance, confining himself strictly to what has been agreed, without imposing any conditions not requested, without inserting unnecessary clauses, and observing the general rules prescribed by art. 2594.

ART. 2598. Notaries and Judge-Notaries, in drafting an instrument involving the sale of real estate, shall observe the form published at the end of this Book.†

ART. 2599. The parties may express in the instrument the number of copies thereof to be issued, stating the persons to whom they are to be given, and the notary must do so.

2604.

* This article has been amended by art. 333 of law 57 of 1887.

Note that there is a difference between the substantial formalities of an act or contract which notaries authorize, and the substantial formalities of a public instrument. See art. 2590.

† This article has been repealed by art. 45 of law 57 of 1887.

ART. 2600. If the parties should not state anything regarding the issue of copies of the instrument, the notary shall, nevertheless, give a copy to each of the parties.

ART. 2601. Even though the contracting parties should not have stated anything regarding the number of copies to be made, or even if his respective copy shall have been given to each party, according to the preceding article, an instrument being involved which would not give a right of action for the enforcement of an obligation or by which a third party cannot be prejudiced, the notary shall give the copies which may be requested to the persons interested and not to others.

ART. 2602. But if an instrument is in question by virtue of which a demand may be made for the fulfillment of an obligation whenever the instrument is presented, the notary shall not issue any second or subsequent copies thereof without an order from the Judge or Prefect of the respective circuit or territory.

2605.

ART. 2603. In order that in the case of the preceding article the Judge or Prefect may order the issue of a copy of an instrument, the following requisites are necessary:

1. That the person requesting the copy state to the Judge or Prefect, under oath, that without malice or neglect on his part the copy which he had in his possession was destroyed or lost, or that said copy is filed in another case, mentioning the same, and that the petitioner requires another copy for a different purpose, incompatible with the use to which he devoted the copy which he had.

2. That he does not know the whereabouts of said copy, if the case be one of loss.

3. That the obligation had not become extinguished in whole or in part, as the case may be.

4. That if the lost copy should be recovered, if the case be one of loss, he obligates himself not to make use thereof and to deliver it to the respective notary in order that the latter may destroy it.

Upon such request being made, the opposite party shall be cited, and if such party confesses the debt, or does not contradict the petition within three days after the citation, the Judge or Prefect shall grant the petition and the notary shall issue the copy immediately below the order of the Judge or Prefect.

If the opposite party plead that the obligation is extinguished, and that he consequently opposes the issue of the copy, the Judge or Prefect shall grant a common period, not exceeding fifteen days, for proof of the plea, and if such proof be not adduced during such period, the Judge or Prefect shall order that the copy be issued as prescribed in the preceding paragraph. From the decision of the Judge or Prefect an appeal lies to

the Federal Supreme Court, which shall hear and determine the appeal as an interlocutory issue.

ART. 2604. Copies must be made on perfectly white paper, all sheets rubricated by the notary in the margin and authenticated at the foot with the full signature of the notary, stating the date of issue, the number of sheets it contains, for whom the respective copy is prepared, and, in a proper case, by order of what Judge or Prefect it has been issued. If the copy should contain any insertion, error or erasure, a note thereof shall be made at the foot, before the authentication of the copy, as prescribed regarding original instruments in article 2583.

Notes shall be made in the margin of the original instrument, signed with the surname of the notary, of the number of copies issued, to whom and on what date and by order of what Judge or Prefect, if a judicial order was made for the purpose, and at the foot or in the margin of the copies the notary shall state, also subscribing his surname only, the number of the respective copy and the fees charged for the original instrument and the copy, citing the provision of law by virtue of which he made the charge.

The last note mentioned in the preceding paragraph, shall also be made by the notary in all other cases in which he is required to charge fees for acts or proceedings passing before him, or in which he takes part, making a proper record of the charge upon the respective paper or act.

2608 and citations.

ART. 2605. No copy of a cancelled instrument shall be issued except on the order of the Judge or Prefect of competent jurisdiction and inserting necessarily the memorandum or statement of cancellation.

2601, 2602, 2603, 2610, 2613.

ART. 2606. Natural or juridical persons may have the documents they desire placed in a protocol and the notary must so protocol the document in the place and under the number corresponding thereto in the protocol.

By filing in the protocol, the document in question does not acquire more force than it originally had, as the purpose thereof is only the security and custody of the document placed in the protocol.

2570, 2576, 2607.

ART. 2607. Final judgments of all kinds, and public sale proceedings which the parties or persons interested desire inserted in the protocol shall be transmitted by copy to the notary in order that he may so insert them, according to the provisions of the preceding article. For the same purpose, copies of acts of partition of property, inventories and other data which may be necessary for an understanding thereof, shall be transmitted to him as soon as they have been judicially

approved. The documents mentioned which, according to law, require registration, shall not be placed in the protocol, if they do not bear the proper note of record.

ART. 2608. In cases of public counter instruments, in which, according to this Code, a memorandum of such counter instruments must be made in the margin of the original instrument to which they refer, the notary shall so inform the contracting parties.

He shall also advise the parties of their obligation to have instruments requiring registration under the law, so recorded.

In a word: the notary shall give the parties the information necessary in order that the act passing before him be not annulled or deficient by the omission of any legal formality.

1766 par. 2, 1779, 2442 par. 2, 2457 last par., 2590 par. 2, 2592.

ART. 2609. The omission on the part of the notary to give the information prescribed, does not legalize the instrument with regard to which the lack of formality may have been incurred; but the notary becomes liable according to the laws.*

CHAPTER 4.

Of the Cancellation of Public Instruments.

ART. 2610. The cancellation of an instrument is the declaration that it is without force on account of the cessation of the legal effects of the obligations contained therein.

2612.

ART. 2611. The cancellation shall take place in the three following cases only:

1. At the request of the parties to the instrument, of their agents or legal representatives, or of their heirs, who appear before the notary to make the cancellation.

2. By the presentation of another instrument executed before the same notary who authorized the previous instrument, or before another notary, in which the parties to the original instrument, their agents, legal representatives or heirs, have declared that the original instrument must be cancelled or considered cancelled. And

3. By a decree of the Judge or Prefect, declaring that the cancellation must be made.

37 par. 2, law 57 of 1887.

* This article has been repealed by art. 98 of Law 153 of 1887, and substituted with art. 96 of said law.

ART. 2612. The cancellation shall be made by another instrument prepared in the office of the notary who authenticated the original instrument, and in the place and with the proper number in the protocol, stating that said original instrument is cancelled, which instrument shall be cited by its number, date, and folio in the respective protocol, and the contents of the instruments.

If the cancellation should be made in the first of the two cases mentioned in the preceding article, the instrument of cancellation shall be subscribed by the attesting witnesses and the notary, together with the parties, their agents, or legal representatives, or their heirs, attaching thereto the papers evidencing the character of the agent, legal representative or only heir, if there be only one, or of all the heirs, if there be several.

If the cancellation should be made in the second or in the third of the cases of the preceding article, a reference shall be made in the instrument of cancellation to the instrument or decree of the Judge or Prefect, expressing the persons who have requested the cancellation, who shall sign with the attesting witnesses and the notary. The copies of the instrument or of the judicial decree, in a proper case, shall be attached to the respective instrument of cancellation.

37 par. 2 of law 57 of 1887.

In addition, in every cancellation, the notary shall make and sign the following note on the original instrument, the cancellation of which is in question, and upon the copies of the original instrument which may be presented to him, writing across the instrument and upon the copies: "Cancelled," as appears from the instrument on file in such and such a protocol under such a number.

ART. 2613. Instruments bearing the note of "cancelled" have no legal force, except in cases in which by virtue of a judgment having the force of a *res judicata*, the nullity of the note is declared.

ART. 2614. The notaries shall issue to the parties in interest certificates of cancellation, in order that the registrar of public instruments may in his turn cancel the register or record of the original instrument.

CHAPTER 5.

Of the Archives of Notaries and Their Inspection.

ART. 2615. Notaries must receive the archives of the notarial office under inventory. A notary omitting this formality is responsible for the archives in accordance with the inventory under which the last of his predecessors received them, including the increase which has taken place in the archives during the term of such predecessor and of the notary whose responsibility is in question.

ART. 2616. In cases of resignation, removal or other causes which do not incapacitate the notary from personally delivering the archives to the person who is to receive them, the delivery shall be made by the notary in person.

In cases of illness or other grave excuse, preventing the notary discontinuing in office from delivering the archives in person, and in the event of the insanity or death of such notary, the delivery shall be made by the attorney, the guardian, the heir or the executor of the said notary.

In cases not exceeding thirty days, it shall not be necessary for the notary to deliver the archives in his charge under inventory.

2619.

ART. 2617. The archives must be received by the notary who succeeds the one going out of office, and, in his absence, by another notary designated by the Prefect or Corregidor, if there should be more than one notary in the territory, and otherwise by the secretary of the municipality.

37 par. 2, Law 57 of 1887.

ART. 2618. The delivery and the inventory must be authorized by the respective Prefect. In the office of the Prefect the original inventory subscribed by the Prefect, by the person delivering it and by the person receiving it, shall be kept, and a copy of the inventory shall be given to the person receiving the archives for preservation in the notarial office.

37 par. 2, law 57 of 1887.

ART. 2619. If a notary should temporarily cease in the exercise of his functions by reason of suspension, leave of absence for more than thirty days, or for any other reason, when he again assumes charge of the archives he shall do so under inventory as above prescribed.

2616 last par.

ART. 2620. Notaries shall keep their archives in the best order, and at the end of the term covered by the books, they shall make an exact and detailed inventory of the increase in the archives during such period.

2564 par. 2, 2571.

They shall take care that the books are not destroyed or deteriorate, and they shall be responsible for the damage occurring, unless they fully prove that it occurred through no fault or omission on their part.

ART. 2621. The Prefect or Corregidor shall make two inspections of the notarial office per year; one during the latter half of the month of

January, and the other during the latter half of the month of July, and he may make such extraordinary inspections as he may consider necessary or when so ordered by the respective superior.

The Prefect may visit, when he considers it advisable, and when he receives an order to that effect from the President of the Union, the notarial offices in the capital of the Territory; and when making such visit he shall extend it to the notarial offices outside of the capital, without prejudice to visiting them at any other times he may consider advisable, or when ordered to do so by the President of the Union.*

37 par. 2 of law 57 of 1887. 2622, 2623.

ART. 2622. The inspection shall be confined to an examination of the books and documents of the archives, including the inventories to be made in accordance with this chapter, and the order, neatness and safety of the office; to an observance of the method pursued by the notary in the execution of instruments, and, finally, to an indication of the changes and improvements he can make in accordance with law; and to the issue of the orders which the inspecting official may consider necessary in the event that he finds a fault for which the notary inspected is responsible.

ART. 2623. There shall be kept in the notarial offices a book or pamphlet exclusively to be used for memoranda of inspections, which shall be made whenever an inspection is made, and which shall show the date, the condition in which the inspecting official found the office, the orders issued by him, etc., being signed by said official, the notary inspected and the secretary of the former, if he should have any. A copy of each memorandum of inspection shall be made for filing and keeping in the archives of the office of the inspecting official.

CHAPTER 6.

Fees of the Notary for Acts of his Office.

ART. 2624. The fees which the contracting parties or the persons interested shall pay to the notary, shall be the following:

1. Forty cents for the execution and insertion in the protocol of any instrument, whatever be its class, executed before the said notary, if not covering more than one sheet, and if more, forty cents for each additional sheet. The pages of these sheets must contain twenty-four lines, and each line at least eight words, and the copies likewise.

2. Twenty cents for the insertion in the protocol of any instrument, final judgment, will that has not been executed before a notary, proceedings relating to the division and partition of property, public sales, etc.

3. Eighty cents for each of the copies of an instrument executed before him, or in the protocol of his office, if the copy does not exceed one sheet, and if so, forty cents for each of the remaining sheets.

4. Forty cents for the note of the cancellation of any instrument.

5. Forty cents for each certificate of cancellation of an instrument.
And,

6. One peso for attending the execution of an act or contract outside of his office, when for the reasons mentioned in article 2560 it is necessary for the notary to do so. This fee shall be double in the event that the execution of the act or contract takes place during the hours of the night after eight P. M.

When the notary attends for the execution of an act or contract outside of his office, without being under the obligation of so doing, or beyond the seat of the circuit of the notarial office, he shall be entitled only to the fees fixed in subdivision 1, unless the parties shall have voluntarily agreed to pay additional ones.

2561.

ART. 2625. When by virtue of an instrument executed before a notary there is one party conveying a right and another accepting it, the party making the conveyance shall pay the notarial fees.

In cases in which the parties mutually convey and accept, and in others not included in the preceding paragraph, the payment of the fees shall be made in proportionate quotas, so that all the parties contribute equally thereto; if there be only one party interested, that party shall pay the fees.

ART. 2626. Copies and certificates issued to the parties shall be paid for by the party in whose favor they are issued.

ART. 2627. The rules given in the preceding articles are subject to any modifications resulting from agreements between the parties, without such agreements being an obstacle to the notary charging the fees due him of the party which is to satisfy them, in accordance with said rules.

ART. 2628. In cases in which in accordance with the rules established, the payment of all or any portion of the fees pertains to the Fisc, to municipal corporations or charitable institutions, the notary shall charge neither all the fees nor the respective portion.

Nor shall the notary charge any fees for the copies and certificates issued in such cases in favor of the Fisc, the municipal corporations and the charitable institutions.

CHAPTER 7.

Manner of Substituting the Notary for Certain Acts in Certain Places.

ART. 2629. In places which are not the seat of a notarial office, the functions of a notary shall be discharged by the secretary of the municipal corporation, in civil matters, in the preparation of powers of attorney of all kinds, substitutions of powers, protests and other acts, where delay would be prejudicial, which must be executed by persons physically incapable from going to the seat of the notarial circuit, and in the execution of contracts where the principal value involved does not exceed fifty pesos. In such cases, the municipal secretaries shall comply with the duties imposed in this Title upon notaries, as they must be considered as such when they exercise the functions embraced in this article.

2548.

The authority referred to in the first part of the preceding paragraph does not cover testaments, which must be executed in accordance with the provisions of the Title *Of the Execution of Testaments*.

ART. 2630. Instruments passing through the hands of municipal secretaries which require recording or registration in accordance with law, shall be recorded in the office of the respective place as are instruments of the same character executed before a notary.

ART. 2631. The respective Prefect and Corregidor shall inspect the offices of the municipal secretaries in their capacity of notaries, at the times and in the manner prescribed for the inspection of notarial offices, and shall, on such inspections, exercise the powers conferred upon them by this Title in connection with inspections of notarial offices.

37 par. 2, of law 57 of 1887.

ART. 2632. The memorandum book and protocol to be kept by the municipal secretaries in their capacity as notaries, shall also be arranged by economic periods, in the same manner as those to be kept by the notaries.

Upon the expiration of the respective period, the municipal secretary shall close said books in the same manner as the notary, shall bind the protocol, prepare the corresponding index and send it together with the respective memorandum book to the notary of the circuit at the end of the month following the expiration of the economic period.

2564 par. 2, 2571, 2573.

ART. 2633. After the notary shall have received the protocols to be sent to him by the secretaries of the municipalities, he shall gather said books in one or more volumes, in a handy size and form, and shall

archive and take charge of them in the notarial office together with the respective memorandum books, in the same manner as the books originally formed in the notarial office are kept.

2572.

ART. 2634. When the respective notary does not receive the books eight days after the termination of the month when the secretaries are required to transmit said books, he shall so inform the respective Prefect or Corregidor, in order that such official may issue the proper orders, or shall advise the Prefect or Corregidor, in a proper case, in order that the liability incurred by the offender may be enforced.

37 par. 2 of law 57 of 1887.

ART. 2635. The copies to be issued and the cancellations to be effected while the books remain in the power of the municipal secretaries, shall be issued and made by the latter; subsequent ones shall be issued and made by the respective notary.

ART. 2636. In the public instruments drawn before a municipal secretary, in addition to the formalities mentioned in article 2595, the absence of the full signature of the municipal secretary produces the nullity of the instrument.*

* Amended by art. 333 of law 57 of 1887.

TITLE XLIII.

Of the Registration of Public Instruments.

CHAPTER I.

Purpose of the Registration.

ART. 2637. The registration or inscription of public instruments has in view mainly the following purposes:

1. To serve as a means of transferring the ownership of real property and of other real rights therein, which have been mentioned in Chapter 3, Title *Of Tradition*.

2. To give publicity to the acts or contracts transferring or changing the ownership of such real property, or imposing charges or limitations upon the ownership of the same, making it possible for all to ascertain the state or situation of the immovable property; and

3. To give a greater guarantee of authenticity and security to the titles, acts or documents, the registration of which is required, providing for the intervention of a large number of officials in their preparation and custody, and thus avoiding the dangers to which they would be subject if such acts, titles and documents were recorded in one office only.

CHAPTER 2.

Registration Office and Duties of the Official in Charge Thereof.

ART. 2638. In the capitals of the Territories and in other places where there is a notary, the functions of the registrar of public instruments shall be discharged by the secretary of the Prefect or of the respective Corregidor.

11, 12 of law 14 of 1887. 6 of law 46 of 1887. 37 of law 57 of 1887.

ART. 2639. The provisions of the preceding title are extended to embrace the registrar of public instruments, with regard to the qualifications necessary to obtain the office; the term of office; the prohibition of taking charge of the private or official management of the business of others; the grant of leaves of absence and the admission of resignations and excuses; all that is said regarding the notary in such provisions being understood to apply to the registrar.

ART. 2640. The following are the duties of the registrar:

1. Punctual attendance at the office on working days and during the hours which the respective Prefect or Corregidor may fix. The registrar shall inform the public by notices of the hours fixed, and shall be liable to the parties or persons interested for such damages as may be incurred through a failure to record in due time the deeds filed for registration, if such failure be due to the absence of the registrar during the office hours fixed, or to another act chargeable to him.

37 par. 2, law 57 of 1887.

2. To record the titles and acts and keep the books prescribed by law for such records.

3. To furnish the official information and reports requested of him by public officials, with regard to the records upon the books of the office, as to matters of interest to the Union, the municipal corporations and the institutions supported and maintained from public funds.

4. To certify, in accordance with the respective books, to the state or situation of the real property in the place, with regard to which the persons interested desire information; that is, who is the owner of the real property or properties; the freedom from liens or charges and limitations upon the ownership of the property, and other facts which are of record.

The certificates which may be issued by the registrar must be clear and detailed; they shall contain the years to which they correspond and a statement of the books referred to in their preparation and issue: and

2651.

5. Such other duties as the law may prescribe.

law 34 of 1887. 39 par. 2, 43, law 57 of 1887.

CHAPTER 3.

Books to be Kept by the Registrar.

ART. 2641. The registrars shall keep separately the following books:

1. One entitled Register No. 1, for the recording of instruments transferring, modifying, encumbering or limiting the ownership of real property, or which change the right to administer the same.

2. Another called Register No. 2, for the recording of the titles, acts or documents which require registration and are not included in the classifications made in the preceding and in the following subdivisions.

3. Another entitled Register of Mortgages, for the recording of instruments legally constituting mortgages.

1, law 34 of 1887. 2668. 38 to 43 of law 57 of 1887.

ART. 2642. If, during the respective term, one single volume or book of convenient size should not be sufficient for the inscriptions in each book to be kept by the registrar during such term, the number of volumes may be increased, in which event they shall be numbered, 1, 2, etc., of Register No. 1 or No. 2, or of the Register of Mortgages, corresponding to such or such a period.

ART. 2643. In connection with each of the three registers mentioned, there shall be kept another which shall be the index to the respective register.

ART. 2644. The folios of the index to Register No. 1, shall be divided into five columns. There shall be stated in the first column, in alphabetical order, the name or names of the real property the subject-matter of the instrument recorded in the respective section of the register; in the second, the names and surnames of the contracting or principal parties; in the third, the character or nature of the act or contract; in the fourth, the corresponding folio of the register shall be stated; and the fifth shall be used for the purpose of recording the changes or modifications which may be made in the instrument registered, such as its cancellation and similar facts.

ART. 2645. The folios of the index to Register No. 2, shall be divided into four columns, and shall contain: the first, the surnames in alphabetical order, and the names of the contracting or interested parties; the second, a description of the instrument recorded; and the third, a citation or reference to the corresponding folio of the Register. The purpose of the fourth column shall be the same as that of the fifth of Book 1.

ART. 2546. The folios of the record index shall be kept according to places, following their alphabetical order. Each folio shall be divided into five columns. In the first column shall be placed, also in alphabetical order, the names of the estates mortgaged; in the second, their location; in the third, the names and surnames of their owners; in the fourth, a reference to the folio of the record book; and in the fifth, any modification which the instrument recorded may suffer, such as its cancellation or other statements.

ART. 2647. The indices to Book 1 and 2 must be concluded not later than the last day of the month immediately following the month concluding the term which the principal books cover.

The index of the record book shall be formed from day to day in rough form at least, but must be made in clean form during the month mentioned in the preceding paragraph.

ART. 2648. The three principal registers and the record book and the indices, shall be bound and shall contain such number of sheets as may be considered necessary for the transactions to be entered therein during the term they cover.

The principal books must, in addition, be folioed and shall be rubricated on each sheet by the Prefect of the place of registration; said

Prefect shall state at the beginning of the book over his full name, the purpose to which the book is devoted, and the number of sheets of which it consists.

37 par. 2 of law 57 of 1887.

ART. 2649. The term of duration or service of the books to be kept by the registrars, shall be the same as that of the books of the notarial offices.

2571.

ART. 2650. The principal books of the registrars are closed, as are those of the notaries, by a statement signed by the respective Prefect, stating the number of records contained in each volume.

2573, 37 par. 2 of law 57 of 1887.

ART. 2651. Registrars shall not deliver to private parties the books of the office, not even for the purpose of examining them, unless it be done under the immediate and special surveillance of the registrar, without the books being permitted to be taken from the office in which they are kept.

2640 Nos. 3 and 4.

CHAPTER 4.

Titles, Acts and Documents Subject to Registration.

ART. 2652. The following acts, titles and instruments are subject to registration or inscription:

1. Every contract or act *inter vivos*, which causes the change or transfer of the ownership of real property, such as donations, sales, exchanges, and agreements.

2. Every final decision which has been carried into effect and rendered in civil matters, whether rendered by a Judge or court of law, or by arbitrators, and the protocolled decisions of the arbitrators, especially the judgments and decisions which cause a change or transfer of the ownership of real property, or which are declaratory of some right in such real property.

The registration of final judgments is not necessary by Corregidores in civil matters under their jurisdiction, unless by virtue thereof a change or transfer of the ownership of real property or of real rights therein is effected.

3. Mortgage deeds.

4. Instruments constituting in real property any of the rights of usufruct, use, habitation, servitudes, or any other lien or charge, and

generally instruments which place limitations upon the ownership of real property.

5. Testaments.
6. Judicial decisions or approvals of the partition of inheritances, especially those involving real property.
7. Proceedings in connection with the public sale of real property.
8. Records of mines.
9. Titles of privileges.
10. Any document drawn before or filed in the protocol of a notary.
11. The cancellation of any instrument which may have been registered; and
12. Such other titles, acts and documents, with regard to which the formality of registration is prescribed by law.

39, 41, 42, 43 of law 57 of 1887. 1, 6 of law 34 of 1887. 99 of law 153 of 1887.

ART. 2653. The registration or inscription of acts transferring the ownership of real property, mortgage deeds and other instruments relating to real property, mentioned in the preceding article, shall take place in the office of registration of the place where the real property is situated; and if the real property be located in more than one registration district, the record shall be made in the offices of the districts in which the real property is situated.

If the instrument should refer to two or more estates, each situated in a different district, it must be recorded in each of the offices of the district to which the real property corresponds.

97 of law 153 of 1887. 2, 3 of law 34 of 1887.

ART. 2654. If, by virtue of an act of partition, real property, or a portion thereof, which was formerly held *pro indiviso*, is adjudicated to various persons, natural or juristic, the act of partition, in so far as it relates to each estate or to each party to whom adjudicated, shall be registered in the office or offices of the district or districts to which the real property may correspond, by reason of its location, or the part thereof which has been awarded to each participant.

ART. 2655. The titles, acts and instruments the registration of which is obligatory and which are not included in the two preceding articles, shall be recorded in the office of the district in which they may have been executed or contracted.

97 of law 153 of 1887.

ART. 2656. Whenever the name of a rural estate is changed, the person making the change is under the obligation of so informing the registrar or registrars of the district or districts in which the estate may

be situate, in order that the change may be recorded. This obligation must be fulfilled before the expiration of twenty days after such name shall be made use of in a public or official document, or in some public or official proceeding or act, and not later.

The same obligation is imposed upon the co-owners or participants in a rural estate, divided or partitioned, with regard to the new names which the parties may have given to the portions falling to them.

Persons not complying with the obligation prescribed in the two preceding paragraphs, shall incur a fine of twenty-five pesos which shall be imposed by the Prefect or Corregidor, when on inspecting the notarial or registrar's offices, or in any other manner, they shall have knowledge of the omission, or the Judge or Court having the same information; this is without prejudice to making a record of the change of name, at the cost of the person or persons who may have made it.

2666. 37 par. 2 of law 57 of 1887.

CHAPTER 5.

Manner of Making the Registration.

ART. 2657. For the purpose of effecting the registration, there shall be exhibited to the registrar an authentic copy of the title or document, or of the judicial judgment or decree, in a proper case.

2667. 1 law 34 of 1887. 99 of law 153 of 1887. 39, 42 of law 57 of 1887.

ART. 2658. Every title or document presented for record must state clearly the name, surname and domicile of the parties; the name, the location, the boundaries and the value of the estates, and other circumstances which may contribute to give a perfect understanding of the act or contract.

2594 and citations, 2665.

ART. 2659. The record or inscription shall begin with the date of the day thereof and shall state:

1. The nature and date of the deed or instrument.
2. The names, surnames and domiciles of the parties; or of those who as attorneys in fact or legal representatives request the registration. Juridical persons shall be designated by their legal denomination or their popular name, and by the place of their establishment; and what has been said heretofore of attorneys in fact and legal representatives of natural persons, is extended to apply to the representatives of juridical persons.

3. The designation of the thing, as it appears in the title or document.
And

4. The office or archives in which the original title or document may be filed.

The record shall be closed with the full signature of the registrar.

2658. See citations to articles 2657, 2667 to 2670.

ART. 2660. The record or inscription of a testament shall include the date of its execution and its character, it being necessary to state the name of the notary before whom it may have been drawn, if executed before a notary; the name, surname and domicile of the testator; the names and surnames of the heirs and legatees, stating the quota of the former, that is to say, whether they have been constituted heirs of all or of a part only, such as one-half, one-third, one-quarter or one-fifth of the liquidated estate, and with regard to the legatees, the character or nature of the respective bequests.

2657, 2658.

ART. 2661. The record of a judgment or decision shall include its date, the designation of the superior or inferior court, Prefect or Corregidor who may have rendered it, and the names of the arbiters or arbitrators, and a literal copy of the adjudging portion thereof.

2657, 2658.

ART. 2662. The record of a legal act of partition shall include the date of such act, the name and surname of the partitioner or partitioners, and the designation of the respective parts. The records or inscriptions referred to in this article and the two preceding, shall conform otherwise to the provisions of article 2659.

2657, 2658.

ART. 2663. The record or inscription of a mortgage must contain:

1. The date on which the registration is made.
2. The names, surnames and domiciles of the creditor and of the debtor, the provisions of subdivision 2 of article 2636 being observed in these designations.

3. The date and nature of the contract giving rise to the mortgage, and the archives where it is filed.

If the mortgage shall have been constituted in an instrument separate from the contract, the date of the contract shall also be stated and the archives containing the instrument evidencing such contract.

4. The name and situation of the estate mortgaged; its boundaries and all the notes and indications by which the same may be known.

If the estate mortgaged be a rural one, its situation may be expressed, and if located in more than one place, they shall all be stated.

If the estate mortgaged be an urban one, the place and street of its location shall be expressed.

5. The specific sum involved in the mortgage, provided it is confined to a specific sum, and

6. The full name of the registrar.

ART. 2664. The registration shall not be annulled on account of the absence of one or more of the designations prescribed in the preceding articles of this chapter, provided that from the record or from the title, the subject-matter of the record, it is possible to ascertain what said record may fail to state; but the absence of the signature of the Registrar does void the record where this lack appears.

2658 to 2662.

ART. 2665. However, the record of a mortgage or of the constitution of any other charge or limitation of ownership upon real estate shall not be valid, when the circumstances mentioned in article 2663 shall not have been stated clearly; this shall also apply to the registration of the mortgage on a part of an estate held *pro indiviso*, as in such case the designation of the name, situation and boundaries must be made by expressing that of the entire estate, and making a note that the part mortgaged corresponds to the said estate held *pro indiviso*.

When a mortgage deed or any instrument imposing any charge upon or limitation of the ownership of real property, lacking the designations referred to in the preceding paragraph, shall be presented to the registrar for record, he shall not record it.

Nor shall a mortgage deed be recorded if presented after the twentieth day from the date of the execution of the deed.

2, 3 of law 34 of 1887. 43 of law 57 of 1887.

ART. 2666. The record of the change of the name of a rural estate, shall be effected by making an entry in Register No. 1 of the change; this entry shall be subscribed by the person making the change and the respective registrar. Said registrar shall make mention of the changes in the respective indices, by means of notes in the places where the indices refer to the estate the name of which may have been changed, and in records which may thereafter be made regarding such estate, the registrars shall take care to mention both names of the estate, expressing first the new name given to the estate, and thereafter the name it had previously, the latter being preceded by the adverb *alias*

2656.

ART. 2667. Whenever a right already registered is transferred, the preceding record shall be mentioned in the new one. In order to facilitate the operation, the respective person interested shall present to the registrar the copy or certified transcript of the instrument which should contain a memorandum of the previous record.

ART. 2668. Every instrument involving two or more acts or contracts which from their nature call for registration in different books, shall require a record to be made in each of such books of the respective act or contract. If, for example, the instrument relates to the alienation of real property and to the constitution of a mortgage, a record shall be made in Register No. 1 of the alienation of the real property and in the mortgage record book, of the constitution of the mortgage.

ART. 2669. Upon the record of inscription of a title having been made and the statement which must be written in the respective book or books having been signed, the registrar shall make a note at the foot of the instrument, stating the date of its record or inscription, and the folio or folios of the book or books in which the entry appears in accordance with the preceding article. The note shall be signed with the full name of the registrar, and thereupon the instrument shall be returned to the person or persons interested.

ART. 2670. If after an instrument shall have been recorded for the first time, new copies thereof should be presented for inscription or record, it shall not be necessary to make another memorandum of registration, unless the parties in interest shall expressly so request; when they do not make this request, the registrar shall confine himself to putting upon the copy presented a note of the registration with reference to the original record, and making an entry in the respective column of the index for the purpose of showing the variations or modifications which the titles recorded have suffered.

In every case the registrar shall be entitled to the emoluments allowed him for the record or inscription.

2671. 44 of law 57 of 1887.

CHAPTER 6.

Fees of the Registrar.

ART. 2671. Registrars shall receive the following fees or emoluments, which shall be paid by the respective persons interested:

1. Forty cents for each record made in their books.
2. Forty cents for an entry cancelling an instrument.
3. Eighty cents for any certificate issued.
4. Five cents for the examination of each of the books to be examined for the issue of a certificate; but such charge shall not be made when the request for the certificate states the year; and

5. Ten cents for the examination of each book, when the persons interested desire to obtain private information.

44 of law 57 of 1887.

ART. 2672. The provisions contained in articles 2625 to 2628 are made to extend to registrars.

CHAPTER 7.

Effects of Registration.

ART. 2673. None of the instruments subject to registration or inscription shall be admissible as evidence in court nor before any public authority, official or employee, if it has not been inscribed or recorded in the respective office or offices, in accordance with the provisions of this Code.

ART. 2674. No instrument subject to registration shall have any effect as to third persons before the date of the inscription or registration thereof.

ART. 2675. When the loss of the protocol or the record and papers of a case containing the original registered instrument shall be established and the respective person interested shall not have in his possession the legalized copy of the instrument, nor shall there be a full copy of the latter in papers kept in any public office, the certificate issued by the registrar regarding the point or points appearing upon the register, with regard to those contained in the original lost instrument, shall be admitted as suppletory proof: such certificate shall not be issued by the registrar except on the order of a competent authority.

CHAPTER 8.

Cancellation of the Record.

ART. 2676. The *cancellation* of a record or inscription is the act by virtue of which it is declared that the record or inscription is null and void by reason of the cancellation also of the instrument which gave rise to the record or inscription.

2610.

ART. 2677. In order that the registrar may consider a record or inscription cancelled, there must be presented to him the certificate or cancellation of the instrument the subject of the record. This certificate shall be issued by the official in whose office the original instrument inscribed or recorded is filed or cared for.

2614.

ART. 2678. The cancellation of a record or inscription shall be effected by making a memorandum in the margin opposite the inscription or record, as follows: "Cancelled as appears from such folio or folios of the current book of cancellations;" this memorandum shall be closed with the proper date and the full signature of the registrar.

The *book of cancellations* is the book to be formed with the certificates of cancellation referred to in the preceding article, a book which shall be folioed consecutively, and which shall be sewn together on the termination of the term of the principal books, and bound when the size thereof is in proportion. This book shall be the evidence of the cancellations which the Registrar may make.

2614, 2679.

ART. 2679. Whenever the cancellation of a record or inscription shall be made, the cancellation shall be noted in such parts of the indices where the latter refer to the original record, the notes being made in the columns of the indices set aside for the purpose.

ART. 2680. If the persons interested should request it, the Registrar shall give them a certificate of the cancellation of the respective record or records.

ART. 2681. A cancelled record or inscription has no legal force, unless a decision partaking of *res judicata* shall declare the nullity of the cancellation. Such nullity shall be considered declared as of right when the cancellation of the record or inscription shall have been due to the cancellation of the original instrument, and the latter shall have been declared null by a decision partaking of *res judicata*.

2613, 2614.

CHAPTER 9.

Archives of the Registrar's Office: its inspections.

ART. 2682. With regard to the archives of the Registrar's office and the inspections to be made thereof, the provisions contained in Chapter 5, Title Of *Notaries Public* are extended to the same.

TITLE XLIV.

Observance of this Code.

ART. 2683. The present Code shall go into operation from the date of its publication, and from that time all former substantive laws and provisions on civil matters of the jurisdiction of the Union are repealed, whether or not contrary to the provisions contained in this Code.

Consequently, controversies and litigation over acts executed, rights acquired, obligations contracted, or contracts celebrated since the date of such publication relating to the said matters, shall be decided in accordance with the provisions of this Code; but controversies and litigation over acts and contracts prior to the publication of this Code, shall be decided in accordance with the substantive laws which were in force when the act was executed, the right acquired, the obligation contracted or the contract celebrated.

15 of law 153 of 1887.

ART. 2684. The citation of the provisions of the National Codes shall be made as follows: "A. (Article, Chapter or Title blank, C. C. (Civil Code); C. Co. (Code of Commerce); C. P. (Penal Code); C. A. (Administrative Code); C. F. (Fiscal Code); C. M. (Military Code); C. J. (Judicial Code); C. Fo. (Code of *Fomento*);" and in the same manner any others which may be issued hereafter, the words placed herein between parentheses being omitted in the citations.

ADDITIONAL
AND
AMENDATORY LAWS

LAW 57 OF 1887.

(April 15)

ON THE ADOPTION OF CODES AND THE UNIFICATION OF THE NATIONAL LEGISLATION.

The National Legislative Council

Decrees:

ART. 1. Ninety days after the publication of this law, there shall govern in the Republic, with the additions and amendments treated herein, the following Codes:

The Civil Code of the Nation, sanctioned on May 26, 1873.

The Code of Commerce of the extinguished State of Panama, sanctioned October 12, 1869; and the National Code on the same subject, edition of 1884, which regulates maritime commerce only.*

The Penal Code of the extinguished State of Cundinamarca, sanctioned on October 16, 1858.

324, law 153 of 1887.

The Judicial Code of the Nation, sanctioned in 1872, and amended by law 76 of 1873, edition of 1874.

The Fiscal Code of the Nation, and the laws and decrees having the force of law relative to the organization and administration of the national revenues. And

The National Military Code and the laws supplementary to and amendatory thereof:

ART. 2. The terms Territory, Prefect, Union, United States of Colombia, President of the State, used in the Civil Code, shall be understood to apply to the new constitutional entities or officials, as the case may require.

324, law 153 of 1887.

ART. 3. In the Code of Commerce of Panama, Republic shall be understood where the State of Panama is spoken of, and the references made in said Code to the laws of the same State, shall be understood as made to the corresponding provisions of the National Codes.

324, law 153 of 1887.

* Law 153 of 1887, article 325, says: "The authentic text of the Code of Commerce adopted by law 57 of 1887, is that contained in the edition of 1874."

ADDITIONS TO AND AMENDMENTS OF THE CIVIL CODE.

PRELIMINARY TITLE.

ART. 4. In accordance with article 52 of the Constitution of the Republic, Title III (arts. 19-52) of the said Constitution is declared incorporated in the Civil Code.*

CHAPTER I.

Of the Law.

See First Part of law 153 of 1887.

ART. 5. When incompatibility exists between a constitutional provision and a legal one, the former shall be preferred.

6, law 153 of 1887.

If in the Codes adopted there be any provisions incompatible with each other, the following rules shall be observed in their application:

1. A provision relating to a special matter, is preferred to one having a general character.

2. When the provisions have a similar special or general character, and are embodied in the same Code, the provision included in the later article shall be preferred; and if they should be in different Codes, the following order of preference shall be observed with regard thereto: Civil Code, Code of Commerce, Penal Code, Judicial Code, Administrative Code, Fiscal Code, Code of Elections, Military Code, Police Code, Code of Fomento, Code of Mines, of Beneficence and of Public Instruction.

49 of law 153 of 1887.

CHAPTER 2.

Definition of Various Words of Frequent Use in the Laws.

ART. 6. Legitimate children are called those conceived during the real or putative marriage of their parents, which produces legal effects, and those legitimated by the marriage of the same, subsequently to the conception.

* This Title of the Constitution has been incorporated in this translation in its proper place.

All others are illegitimate.

52 law 153 of 1887.

ART. 7. Natural children are called those begotten out of wedlock, of persons who could marry each other at the time of the conception, whose children have been acknowledged by their father or mother, or by both, in a public instrument, or by a testamentary act, or in accordance with article 368 of the Code.

Notwithstanding the provisions of the preceding paragraph, natural children shall be considered, as to the mother, and for all civil effects, those conceived by a woman who could freely marry at the time of conception.

54 to 58, law 153 of 1887.

ART. 8. The degrees of relationship to which the last part of article 52 refers, with respect to incestuous children, are those of the parents in a direct line of consanguinity, or in the first degree of the direct line of affinity, or in the second transverse line of consanguinity.

BOOK FIRST.

OF PERSONS.

TITLE I.

Of the Beginning and End of Persons.

CHAPTER I.

ART. 9. The existence of persons terminates by death.

CHAPTER 2.

Of the Presumption of Death by Disappearance.

ART. 10. By virtue of the absolute possession referred to in article 105 of the Code, the restrictions imposed by article 103 cease.

TITLE II.

Of Marriage.

ART. 11. Marriage may be contracted not only with both contracting parties present, but also by a special proxy constituted before a Notary public by the male, in the absence of the latter, it being necessary that the woman with whom the marriage is to be contracted be mentioned in the power. The power is revocable, but the revocation shall have no effect if the contracting woman be not notified thereof before celebrating the marriage.

ART. 12. Marriages celebrated in accordance with the rites of the Catholic Church are valid for all civil and political purposes.

19. 21, 50, law 153 of 1887. 34 to 36, law 30 of 1888.

TITLE III.

Of the Nullity of Marriage and its Effects.

ART. 13. A civil marriage is null:

1. When it shall not have been celebrated before a Judge and the competent witnesses.

2. When it shall have been contracted by persons related to each other in the first degree of the direct line of legitimate affinity.

ART. 14. Before a woman shall have attained eighteen years of age, it shall not be licit for the tutor or curator who may have administered or is administering her property, to marry her without the account of the administration having been approved by the Judge with the legal formalities.

A similar prohibition shall apply to the marriage between the descendants of the tutor or curator and the ward.

Consequently, Judges shall not authorize marriages by which the provisions of this article are violated.

A man who marries according to Catholic rites, with the impediment mentioned in this article, shall be deprived of the administration of the property of his wife.

621 of the Civil Code.

ART. 15. The nullities referred to in numbers 7, 8, 9, 11 and 12 of article 140 of the Code, and No. 2 of article 13 of this law, cannot be cured, and the Judge must declare, even *ex proprio motu*, marriages celebrated in contravention of said prohibitive provisions to be null.

ART. 16. With the exception of the cases of the nullity of civil marriages enumerated in article 140 of the Civil Code and article 13 of this law, there are no others which invalidate a marriage contract. Other faults committed in the celebration thereof, shall subject the offenders to the penalties established in the Penal Code.

14, 17.

ART. 17. The nullity of Catholic marriages is governed by the laws of the Church, and the ecclesiastical authorities have jurisdiction of complaints of this character. A final judgment of nullity having been rendered by the ecclesiastic tribunal, it shall have all civil and political effects, after its inscription in the proper book of registration of public instruments.

12, 18, 19. 50, 51, law 153 of 1887.

ART. 18. The provision of the preceding article as to causes of nullity, applies also to divorce suits.

ART. 19. The provision contained in article 12 shall have a retroactive effect. Catholic marriages, celebrated at any time, shall have all civil and political effects from the date of the promulgation of the present law.

A woman who at the time of the promulgation of this law, shall be married according to Catholic rites but not civilly, may preserve the administration of her property, and may celebrate a marriage agreement with the husband, within a term of one year.

12. 21, 23, 50, law 153 of 1887. 34 to 36, law 30 of 1888.

TITLE IV.

Of Legitimate Children Conceived in Marriage.

FIRST AND LAST CHAPTER.

Special Rules for a Case of Divorce and Nullity of Marriage.

ART. 20. The child conceived during the divorce or the legal separation of the spouses, shall not be considered a child of the husband, unless it be proved that the husband by positive acts, recognized him as his own, or that during the divorce there was a private reconciliation between the spouses.

TITLE V.**Of Natural Children.**

ART. 21. An illegitimate child who has not been recognized voluntarily with the legal formalities, may demand that his father or mother recognize him for the sole purpose of demanding support.*

TITLE VI.**Of Proof of the Civil Status.****FIRST AND LAST CHAPTER.***General Provisions.*

ART. 22. As the principal proof of civil status shall be considered and admitted, with respect to births, or marriages, or deaths of persons baptized, or married, or dying in the Catholic Church, the certificates which with the legal formalities may be issued by the respective parish priests, transcribing the records or entries appearing on the parochial books. Such proof is subject to rejection and may be supplied in the same cases and under the same terms as those to which this title refers, to which it is assimilated.

The law allows to the said parish priests, as fees for the certificates they may issue in accordance with this article, eighty cents for each certificate, without including the value of the stamped paper, the cost of which shall be borne by the persons interested.

The parochial books cannot be examined by order of the civil authority except by virtue of a judicial mandate, for the purpose of verifying a certain point the subject of controversy, in the same cases in which the laws empower the Judges to decree the partial inspection of the books of Notaries Public.

22, 79, law 153 of 1887.

TITLE VII.**Special Rules Relating to the Curatorship of the Deaf and Dumb.**

ART. 23. Articles 546, 547, 548, 550, 551, and 552 are extended to the deaf and dumb.

*This article is expressly repealed by art. 65 of law 153 of 1887, and substituted by art. 66 of the same law.

TITLE VIII.

Juristic Persons.

ART. 24. The Churches and religious associations of the Catholic Religion, are juristic persons.

80, law 153 of 1887.

ART. 25. The Catholic Church and the special ones corresponding to the same church, as juristic persons, shall be represented in each diocese by the respective legitimate prelates, or by the persons or officials which the latter may designate.

53 of the Constitution.

ART. 26. The religious associations whose existence may be authorized by the respective Ecclesiastic Superior, shall be represented in accordance with their constitutions or rules. The same Ecclesiastic Superior shall determine the person who, in accordance with the by-laws, shall represent a determinate religious association.

ART. 27. Juristic persons may acquire property of all kinds, under any title whatsoever, subject to alienation.

81, law 153 of 1887.

BOOK THIRD.

OF SUCCESSION MORTIS CAUSA, AND DONATIONS INTER VIVOS.

TITLE I.

Rules Relative to Intestate Succession.

ART. 28. The legitimate children exclude all other heirs excepting legally acknowledged natural children, without prejudice to the conjugal portion due the surviving husband or wife.

When there are legitimate and natural children, the net estate shall be divided in half, one-half for the legitimate children exclusively, and the other for the same legitimate children and for the natural children, in equal parts jointly between all of them.

84 to 88, law 153 of 1887.

TITLE II.**Of Testamentary Assignments.****CHAPTER I.***Of Assignments Under a Singular Title.*

ART. 29. If the selection of one thing from a number shall be expressly given to the person obligated or to the legatee, the former or the latter respectively may offer or select at their will.

ART. 30. If different shares in one thing be bequeathed to a number of persons, the rules prescribed by Chapter 5, Title IV, of Book III of the Code shall be observed for the division thereof.

CHAPTER 2.*Of Revocable Donations.*

ART. 31. The giving of revocable donations is subject to the rules of article 1056.

BOOK FOURTH.**TITLE I.****Purchase and Sale.****FIRST AND LAST CHAPTER.***Rescission of the Sale on Account of Lesion Beyond Moiety.*

ART. 32. A rescissory action for a lesion beyond moiety in sales of movable property shall not lie, nor shall it lie in sales made by order of the court.

See Arts. 218, 20, 21, and 22 of the Code of Commerce in force.

TITLE II.

Of the Cession of Rights.

FIRST AND LAST CHAPTER.

Of Personal Credits.

ART. 33. The cession of a credit, under any title made, shall have no effect between the assignor and the assignee except by virtue of the delivery of the title. But if the credit assigned does not appear in a document, the cession may be made by the execution of a document by the assignor in favor of the assignee, and in such case the notice referred to in article 1961, must be given with the exhibition of said document.

TITLE III.

Of Quasi Contracts.

ART. 34. Obligations contracted without an agreement, result from the law or from a voluntary act of the parties. Those resulting from the law, are expressed therein.

If the act from which they result be licit, they constitute a quasi contract.

If the act be illicit, and committed with the intention of doing an injury, they constitute a crime (*delito*).

If the act be culpable, but committed without the intention of doing an injury, it constitutes a *quasi crime* or *offense*.

CHAPTER I.

Of the Quasi Contract of Community.

ART. 35. The provisions of article 2338 and those preceding it of the Chapter on the quasi contract of community, does not imply the necessity of applying to the judicial authority to carry into effect the division of the thing held in common, or the sale thereof, for the purpose of dividing the proceeds, if the owners in common agree upon either unanimously, and that their agreement be not interrupted in its execution. But if there should be minors among the owners in common, the provisions of article 485 shall be observed, and in addition the division made shall be submitted for approval to the Judge, as to the part related with the interests of the minor. The Judge, in making the respective decree, shall take into consideration the rules prescribed by article 2338, and may require the proofs which he may consider necessary.

When the division is of real property, a record thereof shall be embodied in a public instrument.

488 of the Civil Code. 37 to 90, law 30 of 1888.

TITLE IV.

Preference of Credits.

ART. 36. In the case of preference of credits, public instruments shall be preferred before private instruments; and when the latter shall have been registered, or judicially acknowledged or filed in a protocol or figured in court, they shall be given preference over other private documents, dating from the date of registration, filing in the protocol or acknowledgment.

1758, 1761 and 1762 of the Civil Code.

TITLE V.

Of Notaries Public.

ART. 37. The Notaries and the Registrars of public instruments established by the law on departmental and municipal administration, are subject to the provisions of Title LXII and LXIII respectively, of Book IV of the Civil Code.

The functions of a judicial character which by said titles are conferred on the Prefect or Corregidor, shall be exercised by the respective Circuit Judge; those not partaking of this character which are conferred on the Prefect, shall be exercised by the new prefects or authorities taking their place, and those which are conferred upon the Corregidores, shall be exercised by the respective Alcaldes.

332, 333. 11, 12, law 14 of 1887. 6, law 34 of 1887. 6, law 46 of 1887. 96, 98, law 153 of 1887.

TITLE VI.

Of the Registrar of Public Instruments.

FIRST AND LAST CHAPTER.

Books to be Kept by the Registrar, and Titles, Acts and Documents Subject to Registration.

ART. 38. The Registrar, in addition to the books referred to in article 2641 of the Civil Code, shall keep the following.

A duplicate of each of the registers Nos. 1 and 2 for the recording of the titles, acts and documents which relate to the interests of the National Treasury, or of that of a Department, or of that of a Municipal District.

One entitled *Register of Mortuary causes*, for the inscription of all the titles or acts which, in accordance with the laws in force, must be recorded in books Nos. 1 and 2, and which have their origin in succession proceedings.

Another entitled *Register of Orders of attachment*, in which a record shall be made of the attachments levied on real property situate in the corresponding Registration circuit.

Another entitled *Register of Civil Suits*, for the inscription of ordinary civil suits affecting the ownership of immovable property.

ART. 39. Any Judge who shall decree the attachment of real property, even though the order shall not have been served, shall inform the respective Registrar of public instruments, by a communication written on ordinary paper. In the communication the order of attachment shall be copied and the suit in which it was decreed shall be indicated, as well as the name of the estate, its situation and boundaries, in order that all these details may be embodied in the record.

The Registrar shall record the order of attachment at once upon receiving the communication, and shall then return it to the Court of origin, with a memorandum at the foot, stating the folio of the book upon which the record was made.

ART. 40. When the discharge of an estate from an attachment shall be ordered, the cancellation of the respective record of the attachment shall also be ordered.

ART. 41. An estate shall not be considered as attached until the order of attachment shall be recorded.

ART. 42. Every Judge before whom an ordinary civil suit is brought as to the ownership of an immovable, shall order that a note thereof be made in the *Register of Civil Suits*, as soon as the complaint shall have been served upon the defendant.

The Judge, in a communication written on ordinary paper, shall inform the Registrar of the following: by and against whom the suit has been brought, the name of the real property, its location and boundaries. Upon the record having been made by the Registrar, the thing shall be considered in litigation for the purposes of article 1521 of the Civil Code.

Upon the termination of the suit, by judgment or abandonment, the Judge shall order the cancellation of the record.

ART. 43. The Registrar of public instruments shall not record any instrument whatsoever of alienation, nor inscribe any instrument by which a mortgage is constituted, when there shall appear recorded in the *Register of orders of attachment* or in the *Register of civil suits*, either the order decreeing the attachment of the estate which it is desired to alienate or mortgage, or the civil suit referred to.

ART. 44. The Registrar shall receive the following fees:
 For the recording of an attachment or of a suit, forty cents for each.
 For the cancellation of one of said records, twenty cents.
 For the certificate of one of said records, forty cents.

332, 333.

FINAL PROVISION.

ART. 45. Articles 10, 24, 51, 60, 94, 114, 139, 146, 147, 318, 328, 329, 332, 643, 644, 645, 647, 651, 1045, 1051, 1182, 1197, 1949, 2302 and 2598 of the Code are repealed; as well as paragraphs 2 of art. 52, 2 of article 105, Nos. 4 and 10, 13 and 14 of article 140, the paragraph following subdivision 14, of the said article 140, and paragraph 1 of article 1175, all of the Code referred to.*

*In the official edition article 1151 is incorrectly cited as being repealed; art. 1051 should have been cited.

LAW 153 OF 1887.

(August 24.)

Supplementing and Amending the National Codes, Law 61 of 1886, and Law 57 of 1887.

THE NATIONAL LEGISLATIVE COUNCIL

Decrees:

PART FIRST.

General Rules as to the Validity and Application of the Laws.

ART. 1. Whenever any inconsistency is observed in the laws, or there is any conflict between the prior and subsequent law, or it is endeavored to establish the legal transit of an old law to a new law, the authorities of the Republic, and especially the judicial authorities, shall observe the rules contained in the following articles.

ART. 2. The subsequent law prevails over the earlier law. In the event that a subsequent law should be contrary to a previous one, and both of a date prior to the act the subject of proceedings, the subsequent law shall be applied.

ART. 3. A legal provision is considered as not in force by virtue of the express declaration of the legislator, or its incompatibility with special later provisions, or by reason of the existence of a new law fully regulating the matter to which the earlier provisions referred.

ART. 4. The principles of natural law and the rules of jurisprudence shall serve to illustrate the Constitution in doubtful cases. The constitutional principles, are in their turn, a standard for the interpretation of the laws.

ART. 5. Within natural equity and the constitutional principles, critics and hermeneutics shall serve to fix the intention of the legislator and elucidate or harmonize obscure or inconsistent legal provisions.

ART. 6. An express provision of law subsequent to the Constitution is considered constitutional, and shall be applied even when apparently contrary to the Constitution. But if it were not an express provision, but obscure or deficient, it shall be applied in accordance with the meaning most in accordance with the prescriptions of the Constitution.

ART. 7. Title III of the Constitution on "civil rights and social guaranties," has also legal force, and, within the laws subsequent to the Constitution, the priority corresponding to it as an integral and primordial part of the Civil Code.

ART. 8. If there be no law exactly applicable to the case the subject of controversy, the laws regulating similar cases or matters, and in their absence, the constitutional principles and the general rules of law, shall be applied.

ART. 9. The Constitution amends and repeals the pre-existing legislation. Any legal provision prior to the Constitution and clearly contrary thereto in letter or spirit, shall be rejected as not in force.

ART. 10. In other doubtful cases, the Judges shall apply the most probable legal doctrine.

Three uniform decisions by the Supreme Court, as a Tribunal of Cassation, upon the same point of law, constitute the most probable legal doctrine.

ART. 11. Decrees of a legislative character issued by the Government by virtue of constitutional authorization, have the full force of law.

ART. 12. The orders and other executive acts of the Government issued in the exercise of power regularly vested in the same, have obligatory force, and shall be applied provided they are not contrary to the Constitution, nor to the laws or most probable legal doctrine.

ART. 13. Custom, if general and in accordance with Christian morals, constitutes law, in the absence of positive legislation.

ART. 14. A law repealed shall not revive by the mere references which may be made thereto, nor by the abolition of the law which repealed it. A repealed provision shall recover its force only in the form in which it may be reproduced in a new law.

ART. 15. All Spanish laws are abolished.*

ART. 16. Canonical legislation is independent of civil legislation, and does not form part of the latter; but it shall be formally respected by the authorities of the Republic.

ART. 17. Mere expectations do not constitute a right against the new law which annuls or restricts them.

ART. 18. The laws which for reasons of morality, salubrity or public utility restrict rights protected by a previous law, have an immediate general effect.

If the law should provide for expropriations, its execution requires previous compensation, which shall be made in accordance with the pre-existing laws.

If the law should establish new conditions for the exercise of an industry, the persons interested shall be granted the term which the law fixes, and if not fixed by the law, the term of six months.

ART. 19. Laws which establish for the administration of a civil status conditions different from those required by a previous law, have obligatory force from the date upon which they go into effect.

* See arts. 1 and 2 of law 1, Part 2, Treatise 2, of the Granadian Recopilation.

We do not believe that a declaration of the repeal of the Spanish laws prevents their application in controversies and suits involving contracts celebrated or acts executed while said laws were in force. See art. 2683 of the Civil Code. (*Angarita*.)

ART. 20. The civil status of persons acquired in accordance with the law in force at the date of its constitution, shall subsist even though said law should be abolished; but the rights and obligations annexed to the said status, the consequent reciprocal relations of authority or dependence between spouses, between parents and children, between guardians and wards, and the rights of usufruct and administration of property of others, shall be governed by the new law, without prejudice to the acts and contracts validly celebrated under the authority of a prior law having their proper effects.

ART. 21. A marriage may, by a subsequent law, be declared as celebrated at some passed period, and valid as to its civil effects, from the date of an act sanctioned by religious custom and the general custom of the country; in so far as this retroactive benefit does not injure rights acquired under the authority of prior legislation.

ART. 22. The proofs of a civil status legitimated from a passed period, by the subsequent law, shall be subordinated to the same principle, which is recognized as determining the legitimacy of that status.

22 of law 57 of 1887.

ART. 23. The capacity of the woman to administer her property, shall be governed immediately by the subsequent law. But if the latter shall restrict said capacity, the restriction shall not be enforced until the expiration of one year, unless the law itself should provide otherwise.

ART. 24. Children declared legitimate under the authority of one law, shall not lose their character by virtue of a subsequent law.

ART. 25. The rights of illegitimate and natural children are subject to the subsequent law in so far as the application thereof is not prejudicial to the legitimate succession.

ART. 26. He who, under the authority of one law shall have the administration of the property of another, or he who validly shall discharge the duties of guardian, shall preserve the title he acquired earlier, even though a new law should require, for its acquisition, new conditions; but the exercise of functions, compensation due the guardian, incapacities and excuses arising, shall be governed by the new law.

ART. 27. The existence and the rights of juristic persons are subject to the rules established in articles 19 and 20, respecting the civil status of persons.

ART. 28. Any real right acquired under a law and in accordance therewith, subsists under the authority of another; but with regard to its exercise and charges, and its extinction, the provisions of the new law shall prevail.

ART. 29. Possession, constituted under a former law, is not retained, lost or recovered under the authority of a later law, excepting by the means or with the requisites prescribed in the new law.

ART. 30. Rights deferred under a condition that, in accordance with the provisions of a later law, must be considered as lapsed if not fulfilled within a certain time, shall subsist under the authority of the new law and for the time which may have been fixed by the earlier law, unless such time, in that part thereof running after the enactment of the new law, shall exceed the full period allowed by the latter, as in such case, if the condition should not be performed within the period thus counted, it shall be considered as lapsed.

ART. 31. Whenever a new law shall prohibit the constitution of various successive usufructs, and the first should expire before said law goes into effect, and one of the subsequent usufructuaries should have begun to enjoy the thing, the latter shall continue to enjoy it under the new law for such time as he may be authorized to by his title; but the right of the subsequent usufructuaries, if there be any, shall lapse.

The same rule shall apply to the successive rights of use and habitation and to *fideicommissa*.

ART. 32. Natural and voluntary servitudes constituted in a valid manner under the authority of an old law, shall be subject in their exercise and preservation to the rules established by the new laws.

ART. 33. Any person shall have the right to take advantage of the natural servitudes the imposition of which is authorized by a new law; but in order to do so he shall be obliged to compensate the owner of the servient tenement for the damages which may be caused him by the constitution of the servitude, such owner renouncing on his part the profit which may result in his favor by the reciprocity of the servitude; but he may always recover his right to such profits upon paying the indemnity mentioned.

ART. 34. The exterior formalities of testaments shall be governed by the law in force at the time of their execution; but the dispositions contained therein shall be subordinate to the law in force at the date of the death of the testator.

Consequently, the laws in force at the time of the death of the testator on the incapacity or unworthiness of the heirs or assigns, the *légittimes*, betterments, conjugal portion and disinheritance, shall prevail over those prior thereto.

ART. 35. If the testament should contain dispositions which according to the law under which it was executed should not be carried out, they shall, nevertheless, be carried out, provided that they are not in conflict with the law in force at the date of the death of the testator.

ART. 36. In forced or intestate successions, the right of representation of those called thereto shall be governed by the law under which said succession may have been opened.

But if the succession be opened under the authority of one law, and in a testament executed under the authority of another law an indeterminate person should have been called who, in the absence of the

direct assign is to succeed in whole or in part to the inheritance by his own right or by representation, this person shall be determined by the rules to which said right was subject according to the law under which the testament was executed.

ART. 37. In the adjudication and partition of an inheritance or legacy the rules governing at the time of its delation shall be observed.

ART. 38. In every contract the laws in force at the time it was celebrated shall be understood as incorporated therein.

Herefrom are excepted :

1. The laws concerning the mode of enforcing by suit the rights resulting from the contract; and

2. Those which affix penalties for a violation of the stipulations; which violation shall be punished in accordance with the law under which it may have been committed.

ART. 39. The acts or contracts validly celebrated under the authority of one law may be proved under the authority of another, by the means which the former established for their justification; but the form in which such proof is to be adduced shall be subordinated to the law in force at the time of its production.

ART. 40. The laws regarding the hearing and procedure of actions prevail over the prior laws from the moment they go into effect. But terms which may have begun to run, and proceedings and measures already initiated, shall be governed by the law in force at the time of their initiation.

ART. 41. A prescription initiated under the protection of one law, and which shall not have been completed yet at the time of the promulgation of a new law modifying the same, may be governed by the first or the second, at the option of the prescriber; but if the later law be selected, the prescription shall not begin to be counted except from the date said later law may have gone into effect.

ART. 42. What a later law may declare absolutely imprescriptible, cannot be acquired by time under the authority of the same, even though the person seeking the prescription shall have begun to possess it under a prior law which authorized the prescription.

ART. 43. The pre-existing law takes precedence over the *ex post facto* law in penal matters. No one can be punished or tried excepting under a law promulgated before the act which gave rise to the proceedings. This rule applies only to laws which define and punish crimes, but not to those which establish the Tribunals and prescribe the procedure, which shall be applied in accordance with article 40.

ART. 44. In penal matters, the favorable or permissive law is preferred in proceedings to the odious or restrictive law, even though the former be subsequent to the time of the commission of the crime.

This rule favors convicted criminals who may be serving their sentences.

ART. 45. The preceding provision has the following applications:

The new law which explicitly or implicitly takes away the criminal character from an act which formerly partook of the nature of a crime, entails pardon and rehabilitation.

If the new law reduces in a fixed manner a penalty which was formerly also fixed, the corresponding reduction of penalty shall be declared.

If the new law reduces the maximum of the penalty and increases the minimum, that of the two laws which the person interested may invoke, shall be applied.

If the new law reduces the corporeal penalty and increases the pecuniary one, it shall prevail over the old law.

Doubtful cases shall be decided by a benignant interpretation.

ART. 46. An order which, in accordance with the new law, discontinues or reduces the penalty of those serving a sentence, shall be administrative and not judicial.

ART. 47. The power which sentenced criminals may have acquired to obtain by right and not as a grace, a reduction of penalty, in accordance with the law in force at the time they were sentenced, shall subsist under a new law as to the moral conditions determining the right and the part of the sentence to which the right refers; but they shall be governed by the new law with regard to the authorities who must grant the reduction and the formalities to be observed in demanding it.

ART. 48. Judges or Magistrates who shall refuse to judge under the pretext of silence, obscurity or insufficiency of the law, shall incur liability by reason of denial of justice.

ART. 49. Article 5 of law 57 of 1887, is amended in the terms of the preceding provisions, and article 13 of the Civil Code is repealed.

SECOND PART.

Civil Legislation.

I. OF PERSONS.

[See Civil Code, Book I, Title 4, 11, 14, 16, 17, 20 and 36.]

§ 1. CIVIL STATUS. MARRIAGE.

ART. 50. Marriages celebrated in the Republic, at any time, in accordance with Catholic rites, shall be considered legal, and shall have, from the time of the administration of the sacrament, the civil and political effects which by law marriage entails, in so far as this benefit does not affect the rights acquired by acts or contracts realized by both spouses, or by one of them, with third persons, in accordance with the civil laws which were in force in the respective State or territory before April 15, 1887.

Article 19 of law 57 of 1887, is thus explained, in accordance with article 21 of this law.

ART. 51. The ecclesiastical tribunals shall have exclusive cognizance, in accordance with canonical laws, of suits for the nullity and divorce of Catholic marriages celebrated at any time and the final decision rendered by the same shall produce all civil effects in accordance with the provisions of article 17 and 18 of law 57.

§ 2. LEGITIMATION OF CHILDREN.

ART. 52. The subsequent marriage legitimates *ipso jure* the children conceived before and born during the same, excepting in the following cases:

1. If the child was conceived in adultery : the fact of one of the parents ignoring that the other was married, at the time of the conception, or the fact of the other having believed in good faith that his or her marriage no longer subsisted, are circumstances which do not invalidate this exception.

2. If the subsequent marriage is presumed or putative.

3. If said marriage lacks the legal conditions necessary to produce civil effects.

Article 237 of the Civil Code is amended in these terms.

§ 3. PATERNAL POWER.

ART. 53. Paternal power is the aggregation of rights which the law recognizes in the legitimate father over his children who are not emancipated.

Upon the death of the father, these rights shall be exercised by the legitimate mother while she observes good habits and does not re-marry.

Children of any age not emancipated shall be *children of the family*, and the father or mother with regard to them, the *father or mother of the family*.

§ 4. NATURAL CHILDREN.

ART. 54. Children born out of wedlock, not of punishable intercourse, (*dañado ayuntamiento*) may be acknowledged by their parents or by one of them, and shall have the legal quality of natural children with respect to the father or the mother who may have acknowledged them

7 law 57 of 1887.

ART. 55. The acknowledgment is a free and voluntary act of the father or mother who acknowledges.

ART. 56. The acknowledgment must be made by a public instrument *inter vivos*, or by a testamentary act.

If one of the parents only makes the acknowledgment, he or she shall not be obliged to state in whom or by whom the natural child was had.

1758 of Civil Code. 7 of law 57 of 1887.

ART. 57. The acknowledgment of the natural child must be notified and accepted or repudiated in the same manner as legitimation would be, according to Title 11 of the Civil Code.

ART. 58. The acknowledgment may be impugned by any person who proves that he has an actual interest therein.

One of the following causes must be established for the purpose of impugning the acknowledgment.

1st and 2d. The first and second of those designated as necessary for the purpose of impugning the legitimation in article 248 of the Civil Code.

3d. The fact of having been conceived, according to article 92 of said Code, when the father or the mother was married.

4th. By reason of having been conceived in punishable intercourse, qualified as such by a final judgment.

5. By reason of the acknowledgment not having been executed in the form prescribed in article 56 of this law.

6 and 7 of law 57 of 1887.

§5. RIGHTS AND OBLIGATIONS BETWEEN PARENTS AND NATURAL CHILDREN.

ART. 59. The natural children do not have, with respect to the father or mother who acknowledged them with the legal formalities, other rights than those expressly granted them by the laws.

With respect to the father or the mother who has not acknowledged them in this manner, they shall simply be considered as illegitimate.

ART. 60. The obligations of legitimate children to their parents, expressed in articles 250 and 251 of the Code, extend to the natural child with respect to the father or the mother who may have acknowledged him with the legal formalities, and if both have acknowledged him in this manner, he shall be specially subject to the father.

ART. 61. The father or mother who shall have acknowledged the natural children, is obliged to personally care for them, in the same terms as the legitimate father or mother would be required to, according to article 253 of the Code.

But a married person cannot have a natural child in his or her house without the consent of her husband or his wife.

ART. 62. The expense of bringing up and educating the natural child shall be borne by the father or mother who shall have acknowledged him.

Such education shall include at least primary instruction and apprenticeship to a profession or trade.

If both parents shall have acknowledged him, the Judge shall in a necessary case fix the amount which each of them, according to their powers and circumstances, is to contribute for the bringing up and education of the child.

The second paragraph of article 257 of the Code is applicable to the property of natural children.

The provisions of articles 258, 259 and 261 to 268, inclusive, of the Code, are likewise applicable to natural parents or children.

ART. 63. The children under five years of age, without distinction as to sex, and the daughters of any age, shall be under the personal care of the mother. Nevertheless, the care of the children of any age or sex shall not be entrusted to her when by reason of the depravity of the mother there is reason to fear that they will be perverted.

In such case, or if she be qualified for any other cause, the personal care of all the children may be entrusted to the father who shall have acknowledged them in legal form.

ART. 64. The personal care of male children over five years of age, whom the father may have acknowledged in accordance with the law, shall be under his charge, unless by reason of his depraved character or other causes of disqualification, the Judge shall prefer to entrust them to the mother.

ART. 65. Titles 16 and 17 of Book First of the Civil Code, and article 21 of law 57 of 1887, are repealed.

§ 6. ILLEGITIMATE CHILDREN NOT FORMALLY ACKNOWLEDGED.

ART. 66. An illegitimate child not voluntarily acknowledged with the legal formalities, cannot demand that his father or mother acknowledge him, except for the sole purpose of demanding support.

21 of law 57 of 1887.

ART. 67. Any person who shall prove that he has had charge of the bringing up of a child who has not attained the age of puberty may bring the suit in his name.

Persons under twenty-one years of age, not qualified as to age, shall be assisted in this suit by their tutor or general curator, or by a special curator.

ART. 68. The illegitimate child shall have the right to have his alleged father cited to appear personally before the Judge to declare under oath if he believes he is such father, the purpose of the citation being stated in the writ.

ART. 69. If the defendant should not appear when able to do so, and a second citation shall have issued, the object being stated therein, the paternity shall be considered as acknowledged.

ART. 70. An investigation into or a presumption as to the paternity is not admissible by other means than those expressed in the preceding articles.

ART. 71. If the defendant shall confess that he is the father, or, according to the provisions of article 70 of this law, the paternity should be considered as acknowledged, he shall be obliged to furnish the child support, but only in so far as necessary for his bare subsistence.

This restriction shall not apply in the case of article 73 of this law.

ART. 72. No illegitimate male who shall have attained the age of twenty-one years, and shall not be physically incapacitated from engaging in a work from which he can gain a subsistence shall be permitted to demand acknowledgment by or support from his father or mother; but the action shall revive if the child should subsequently become unable to gain a subsistence from his work.

ART. 73. If by any trustworthy means abduction should be established and the conception might have been possible while the person abducted was in the power of the abductor, the latter shall be adjudged to furnish the child, not only the support necessary for mere subsistence, but in so far as possible, that in accordance with the social rank of the mother.

Abduction is the seduction of a minor by causing her to leave the house of the person under whose care she may be, even though force be not employed.

The action granted by this article expires in ten years from the date it could have been brought.

ART. 74. An illegitimate child shall have the right to receive assistance from his mother with the support necessary if he cannot obtain it from the father.

This action cannot be brought against any married woman.

ART. 75. If the defendant should deny that the child is hers, the plaintiff shall be permitted to prove it by means of trustworthy testimony establishing the fact of the birth and the identity of the child.

The record or certificate of birth shall not serve as proof for the purpose of establishing the maternity.

ART. 76. The support furnished by the father or the mother shall run from the date of the first suit; and support for the time prior thereto cannot be demanded, unless the suit be brought against the father within one year next after the birth.

In such case the support corresponding to this entire year shall be granted, including the expense of the birth, fixed, if necessary, by the Judge.

ART. 77. An illegitimate father suing for support in such capacity, shall not be heard.

But a mother who demands support of the illegitimate child, shall be heard, unless the latter shall have been abandoned by her in infancy.

ART. 78. The judicial proceedings to which the suit brought by the

illegitimate child may give rise, shall be oral, and, if the Judge should deem it advisable, secret.

In the case of article 73 of this law, the proceeding shall be conducted in writing according to the ordinary procedure*.

§ 7. PROOFS OF THE CIVIL STATUS.

ART. 79. With regard to Catholic marriages celebrated at any time and which are to produce civil effects in accordance with the provisions of this law and law 57 of 1887, the principal proofs shall be considered those of ecclesiastical origin, in accordance with the provisions of article 22 of said law 57.

22 of this law.

§ 8. JURISTIC PERSONS.

ART. 80. The Nation, the Departments, the Municipalities, Charitable Institutions, and those of public instruction, and the corporations created or recognized by the law, are juristic persons.

24 *et seq.*, of law 57 of 1887.

ART. 81. Foreign governments have no juridical representation in Colombia for the acquisition of real property.

II. OF PROPERTY.

§ 1. PUBLIC PROPERTY.

§ 2. LITERARY PROPERTY.

[Civil Code, Book II, Title III.]

ART. 82. The unclaimed or vacant property situated within the limits of municipalities belong to the same, excepting the provisions of article 129 of this law.

ART. 83. Law 32 of 1886, on literary and artistic property is incorporated in the Civil Code.

III. SUCCESSION MORTIS CAUSA. INTESATE SUCCESSION.

ART. 84. By a testament executed during the last illness no inheritance or legacy whatsoever can be received, not even as fiduciary executor, by the ecclesiastic who may have confessed the testator during said illness, or customarily during the two years preceding the testa-

*Some of the provisions of this paragraph are included in Title XVI of Book First of the Civil Code, which Title was repealed by article 65 of this law

ment; nor by the Order, Convent or Brotherhood of which the ecclesiastic may be a member, nor his relatives by consanguinity or affinity within the third degree.

Such incapacity does not include the parochial church of the testator, nor such portion of the property which said ecclesiastic or his relatives would have received in an intestate succession.

Articles 1022 of the Civil Code and article 27 of law 57 of 1887 are thus amended.

ART. 85. The legitimate descendants of the deceased, his legitimate ascendants, his legitimate collaterals, his natural children, his natural parents, his natural brothers and sisters, the surviving spouse, and in the last place, the municipality of the residence of the deceased, are called to the intestate succession.

Article 1040 of the Civil Code is thus amended and article 1051 is repealed.

ART. 86. The legitimate children exclude all the other heirs, without prejudice to the conjugal portion due the surviving husband or wife.

ART. 87. In the absence of legitimate descendants, ascendants and brothers and sisters, of a surviving spouse and of natural children, the other legitimate collaterals of the deceased shall succeed him, according to the following rules:

1. The collateral or collaterals of the nearest degree shall always exclude the others.

2. The rights of succession of the collaterals do not extend beyond the tenth degree.

3. The collaterals of simple conjunction, that is to say, those who are relatives of the deceased on the father's side or on the mother's side, enjoy the same rights as the collaterals of double conjunction, that is, those who are relatives of the deceased on the side of the father and on the side of the mother.

ART. 88. Articles 1045 and 1049 of the Civil Code, and article 28 of law 57 of 1887, are repealed.

IV. OBLIGATIONS.

[Civil Code, Book IV, Titles 14, 20, 21, 32, 42, 43.]

§1. PROMISE TO CELEBRATE CONTRACTS.

ART. 89. The promise to celebrate a contract does not produce any obligation whatsoever, unless the following circumstances are present:

1. That the promise is in writing.
2. That the contract to which the promise refers be not of those which the law declares inefficient on account of the absence of the requisites established by article 1511 of the Civil Code.

3. That the promise contain a term or condition fixing the time when the contract is to be celebrated.

4. That the contract be determined in such manner that in order to consummate it the only thing lacking is the tradition of the thing or the legal formalities.

The terms of a contract promised shall be applied only to the matter the subject of the contract.

Article 1611 of the Civil Code is repealed.

§ 2. ABSOLUTE NULLITIES.

ART. 90. The absolute nullity may be pleaded by any one having an interest therein, excepting by him who shall have executed the act or celebrated the contract knowing or being obliged to know of the vice which invalidated it; his declaration may likewise be demanded by the representative of the Department of Public prosecution, (*Ministerio Público*), in the interests of morals or of the law. When it is due to an illicit object or consideration or the absolute incapacity to execute an act or celebrate a contract, it cannot be cured by the ratification of the parties, nor by a lapse of time of less than thirty years. In other cases it may be cured by ratification made with the legal formalities and by ordinary prescription.

Article 1742 of the Civil Code is thus amended.

§ 3. PROOFS OF OBLIGATIONS.

ART. 91. The acts or contracts which contain the delivery or promise of a thing worth more than five hundred pesos, must be in writing.

The evidence of witnesses shall not be admissible in so far as it adds to or alters in any manner what is expressed in the act or contract, nor upon what is alleged to have been said before, or at the time or after its execution, even when such additions or modifications involve a thing whose value is under five hundred pesos.

For the computation of said sum of five hundred pesos, there shall not be considered the value of the fruits, interest or other accessories of the species or amount due.

ART. 92. He who shall sue for a thing of more than five hundred pesos value, shall not be permitted to introduce the evidence of witnesses, even though he limit his suit to said amount.

Nor is the evidence of witnesses admissible in suits involving less than five hundred pesos, when it is declared that what is sued for is a part or the balance of a credit which should have been reduced to writing and was not.

ART. 93. From the provisions of the preceding articles are excepted the cases in which there may be a principle of proof in writing, that is to say, a written act of the defendant or of his representative, which makes the litigious act probable.

Thus, a note for more than five hundred pesos for the purchase of a thing which is to be delivered to the debtor, shall not be full proof of the debt because it does not certify the delivery; but it is a principle of proof in order that this circumstance may be supplied by means of witnesses.

Such cases are also excepted in which it shall have been impossible to obtain written proof, as well as the cases expressly excepted by the law.

ART. 94. Title 21, Book Fourth, of the Civil Code, is thus supplemented.

§ 4. ALEATORY CONTRACTS.

ART. 95. Gambling and betting do not produce any action nor exception. He who wins cannot enforce payment.

If he who loses pays, he shall, in every case, have a right of action for the recovery of what he paid.

Article 2283 of the Civil Code is amended in these terms.

§ 5. PUBLIC INSTRUMENTS. REGISTRATION.

ART. 96. The omission on the part of the notary of the notices prescribed in Chapter 3, Title 42, Book Fourth, of the Civil Code, does not annul the instrument the subject of this lack of formality; but the Notary committing it is legally liable.

ART. 97. The record of writs of attachment and of civil suits shall be made in the Office or Offices of Registration of the Circuit to which the estate attached, or the subject of the suit, may belong.

ART. 98. Article 2609 of the Civil Code is repealed.

ART. 99. Private documents which, in accordance with article 1 of law 34 of March 5, 1887, are to be registered, shall be presented personally to the Registrar by those subscribing thereto, and the entry made in the respective book shall be signed by them and by the Registrar. Article 1 of the law herein cited, is thus amended.

ART. 100. In proceedings of succession *mortis causa*, no other registration fee shall be charged than that corresponding to the instrument of protocolization of the process in the office of the notary.

§ 6. RENT CHARGES. (*Censos*).

ART. 101. A *rent charge* is constituted when a person contracts the obligation of paying to another an annual interest, acknowledging the corresponding capital and charging realty belonging to him with the liability for the interest and capital.

This interest is called *rent or annuity* (*censo ó canon*); the person who pays it, *censatario*, and his creditor, *censualista* (*annuitant*).

ART. 102. The rent charge be constituted by testament, by donation, sale or in any other manner equivalent thereto.

ART. 103. A rent charge may be constituted only on rural or urban property and including the soil.

ART. 104. The capital must always consist or be estimated in money. Without this requisite no rent charge will be constituted.

ART. 105. The proportion between the annuity and the capital cannot exceed the quota determined by law.

The maximum of this quota, until otherwise fixed by law, is five per cent per annum.

ART. 106. The constitution of a rent charge must always be embodied in a public instrument recorded in the proper Registration Office, and without this requisite it shall not be valid as the constitution of a rent charge; but the person obliged to pay the annuity shall be bound in accordance with the terms of the testament or contract, and the obligation shall be a personal one.

No stipulation can be made for the payment of the annuity in a certain amount of fruits. The violation of this rule shall cause the constitution of the rent charge to partake of a defect causing nullity.

ART. 107. Every rent charge, even though stipulated as of a perpetual character, is redeemable at the will of the person paying it.

ART. 108. The person paying the annuity cannot bind himself to redeem it within a certain period; any stipulation of this character shall be considered as not written.

ART. 109. A stipulation for the non-alienation of the estate subject to the rent charge is not valid in the constitution of a rent charge, nor is any which imposes upon the person paying the annuity more charges than those expressed in this law: any stipulation to the contrary shall be considered as not written.

ART. 110. The person charged with the payment of the annuity shall be under the obligation of paying it from year to year, unless the constitutive act shall fix another period for the payments.

ART. 111. The obligation of paying the annuity always follows the ownership of the estate subject thereto, even with regard to the payments due prior to the acquisition of the estate; reserving always the right of the annuitant to proceed against the person charged with the payment who is in default, even when he shall cease to possess the estate and reserving, furthermore, the action of warranty of the new possessor of the estate against the proper person.

ART. 112. The person charged with the payment is not bound for the payment of the principal nor for the annual payments which fell due before the acquisition of the estate subject to the charge, excepting with said estate; but he is bound with all his property for the payment of the annuities falling due during the time he has been in possession of the estate.

ART. 113. The provisions of the two preceding articles shall lie even though the estate shall have lost a large portion of its value, or should have become totally unproductive.

But the person charged with the payment shall be discharged from any obligation by placing the estate, in the condition in which it may be, at the disposition of the annuitant, and paying the payments due, according to the preceding article.

Nevertheless, if through the fraud or grave fault of the person charged with the payment, the estate should be destroyed or rendered unproductive, he shall be liable for the damage.

ART. 114. Even though an estate subject to a rent charge be divided by a hereditary succession, the rent charge shall continue on the entire estate, and it cannot be divided without the consent of the annuitant.

The consent of the annuitant is also necessary in order to reduce to a determinate part of the estate subject to the rent charge, that which has been imposed upon the entire estate, or to transfer the rent charge to another estate.

The division, reduction or transfer of the rent charge to which the preceding paragraphs refer, shall always be made by a recorded public instrument; and if this formality be lacking, the original rent charge shall subsist.

ART. 115. For the division, reduction or transfer of a rent charge which does not belong in absolute ownership to the annuitant or of which the latter is only the usufructuary, in addition to the consent of the annuitant, the judicial approval shall be necessary.

ART. 116. If in the case of the preceding article it should be desired to divide into parts a rent charge upon an entire estate divided by a hereditary succession, in making the division of the rent charge, there shall be taken into consideration the amount of the capital of said rent charge and the value given by expert appraisal to the parts into which the hereditary estate originally subject to the rent charge may have been divided.

The division of the rent charge having been ordered, the Judge shall direct that the respective persons who have participated in the division, execute and record public instruments stating the part of the rent charge which each participant is to continue recognizing, and thus as many distinct and independent rent charges, separately redeemable, shall be constituted, as there are parts into which the hereditary estate originally subject to the rent charge may have been divided.

In the absence of the recorded instruments which each participant in the division is to execute, the original rent charge shall subsist, and each share of the hereditary participants shall be charged with the responsibility for the entire rent charge.

If the division of the rent charge should result in less than four hundred pesos of the original capital falling to one share, the rent charge cannot be divided, and each share shall be responsible for the entire charge.

ART. 117. In the event of the reduction of the rent charge to a deter-

minate portion of the estate subject thereto, and in the case of the transfer of the rent charge to another estate, when a rent charge is in question which does not belong in absolute ownership to the annuitant or of which the latter is only the usufructuary, the formalities and conditions prescribed in the preceding article shall be observed.

The insufficiency of the new estate or share to support the charge shall be just cause for the Judge to withhold his approval or to order the reduction or transfer of the rent charge, and the estate or share shall be considered as insufficient, when the total sum of the charges which it may have to support exceeds one half its value.

Among the charges shall be included the rent charge and special mortgages encumbering the estate.

The transfer or reduction shall be made with the formalities above prescribed, and in the absence thereof, the original rent charge shall subsist.

ART. 118. In the division, reduction or transfer of a rent charge belonging to a municipality, or to public institutions or to another moral person, the same formalities which have been stated shall be observed, without prejudice to the provisions on the same subject which special laws may prescribe.

ART. 119. The redemption of a rent charge is the payment of the capital which constitutes it.

ART. 120. When the annuitant is the absolute owner of the rent charge, he must execute a public instrument of the redemption, and upon said instrument being recorded, the rent charge will be fully extinguished.

ART. 121. When the rent charge does not belong in absolute ownership to the annuitant, the redemption shall be made by the consignment of the capital to the order of the Judge, who, consequently declares it redeemed.

This declaration having been registered in the proper office of Registration, the rent charge is completely extinguished; but in the case referred to in this article, the annuitant shall be obliged to again constitute the rent charge with the capital consigned.

ART. 122. A person charged with the payment of a rent charge who does not owe back payments, may redeem the rent charge whenever he shall desire.

ART. 123. The rent charge cannot be redeemed in parts, unless the annuitant shall agree to the partial redemption.

ART. 124. The rent charge perishes by the complete destruction of the estate subject thereto, by complete destruction being understood that which causes the soil to disappear entirely.

If the soil should reappear, even though in part only, the entire rent charge shall revive; but nothing shall be due as annuities for the intermediate time.

The person subject to the payment of the rent charge, shall be discharged from the obligation of any longer recognizing the rent charge, in the case of the preceding paragraph, upon placing the estate at the disposal of the annuitant.

ART. 125. The personal and real actions of the annuitant prescribe in thirty years, both with regard to the payments falling due during said thirty years as with regard to the capital of the rent charge which is completely extinguished by the prescription.

ART. 126. Every rent charge belonging to a natural or juristic person, without a charge of restitution or transmission, and without any other encumbrance whatsoever, may be disposed of by the annuitant *inter vivos* or by testament, or he will transmit it *ab intestato*, according to the general rules.

ART. 127. In the cases of forced transmission in which the succession is to be perpetual, or to a designated limit, the order of succession shall be that established by the act constitutive of the rent charge, or of the successive usufructs which may have been converted into rent charges in accordance with the pertinent legal provisions, and in what said constitutive act does not provide, the regular order of succession described in the following article shall be observed, which does not extend to the rent charges corresponding to the ecclesiastical benefices called *collative chaplaincies* (*capellanus colativas*).

ART. 128. 1. The first one called shall be succeeded by his legitimate descendants from degree to degree, personally or by representation, the male excluding the female in each degree, and the elder the younger in each sex.

2. In the event of the expiration of the direct line by the death of an annuitant without leaving legitimate descendants, having the right to succeed him, it shall be transferred to his nearest ascendants in the same line who has legitimate descendants, and the latter shall succeed from degree to degree, personally and by representation, the male excluding the female in each degree, and the elder excluding the younger in each sex.

3. If all the descendants of the first one called shall have passed away, the second and his legitimate posterity shall succeed in the same terms.

4. The legitimate posterity of all those expressly called by the constitutive act having been exhausted, no person or line shall be understood as called to succeed by virtue of an implied or presumed substitution of any kind, and the rent charge shall be considered *vacant*.

ART. 129. Vacant rent charges which may have some charge in favor of a pious object, or one of education or charity, shall be awarded in full to the pious foundation or establishment, or to the educational or charitable institution to which the charge may belong: the foundation or establishment shall enjoy the rent charge with the charges to which it may be subject.

The respective Circuit Judge shall make the award, which must be registered in the proper office.

ART. 130. Vacant rent charges, not comprised in the provisions of the preceding article, belong to the municipality in which the estates subject thereto may be situated.

ART. 131. In the cases in which the succession is by lines and with a right of representation, every person called to or excluded from the order of succession by the constitutive act, shall be presumed to be so with all his posterity for ever; and only express provisions of the constitutive act can be opposed to this presumption, in so far as they may be incompatible therewith.

ART. 132. If children legitimated by marriage participate with other legitimate children, the age of the legitimated child shall be counted from the day of the legitimation. If legitimated children only participate, the age of each legitimated child shall be counted from the date of his birth.

ART. 133. The natural children shall not be considered as called, unless expressly so stated in the constitutive act, and in such case only the natural children acknowledged with the legal formalities shall be admitted to the succession.

The other illegitimate children shall not enjoy this right in any case; but they may be called directly and nominally as strangers.

ART. 134. If two or more children called on to succeed shall be born at the same birth, without it being possible to ascertain the priority of the birth, the rent charge shall be divided among them in equal parts, and in each one of them the trunk shall be succeeded to in accordance with the constitutive act.

The charge to which the rent charge may be subject shall be divided in the same manner.

ART. 135. When by the order of succession two rent charges should fall to one person, and one of them, according to its constitution, should be incompatible with the other, the person to whom both fall, in whatsoever words the clause of incompatibility may be couched, shall have the power to choose that which he may desire, and he shall be understood as excluded forever from the other, personally and by representation; and the said other one shall be succeeded to according to the constitutive act as if said person had never existed.

FINAL PART.

Various Provisions.

(Only those relating to the Civil Code are included herein.)

ART. 321. By virtue of article 57 and of this law, transitory article H of the Constitution has produced all its effects. Consequently, the legisla-

tion of the extinguished States is abolished, excepting the provisions of a sectional administrative character, and those of police, that is to say those on matters whose regulation is under the departmental Assemblies in accordance with articles 185 and 186 of the Constitution. The provisions of this character shall continue in force as departmental ordinances, in so far as not contrary to the Constitution and the laws of the Republic.

ART. 322. Rights acquired in accordance with the abolished legislation of the extinguished States, shall subsist according to the rules established in the First Part of this law.

* * * * *

ART. 324. In the Codes adopted the denominations of Corporations and officials, such as United States of Colombia, State, Territory, Prefect, Corregidor, and the others which by virtue of the change of institutions require in some cases a technical substitution, shall be applied to those to whom they correspond by resemblance and logic.

* * * * *

ART. 326. The provisions of article 54 of law 32 of 1886, do not authorize editors to change the authentic numeration of legal provisions

LAW 30 OF 1888

(February 25)

WHICH AMENDS THE JUDICIAL CODE AND VARIOUS OTHER LAWS.

The National Legislative Council

Decrees:

* * * * *

CIVIL CODE.

Marriage.

ART. 34. A marriage contracted in accordance with the rites of the Catholic Religion, annuls *ipso jure* a purely civil marriage previously celebrated by the contracting parties with another person.

ART. 35. For purely civil purposes, the law recognizes the legitimacy of the children conceived before a civil marriage is annulled by virtue of the provisions of the preceding article.

ART. 36. A man who having contracted civil marriage, later marries another woman in accordance with the rites of the Catholic Religion, is obliged to furnish congruous support to the first wife and the children had by her, until she shall contract a Catholic marriage.

Quasi-Contract of Community.

ART. 37. In the division of common tenements, the provisions of articles 2335, 2336, 2337, 2338, 2339, 2340, of the Civil Code shall be observed.

35 of law 57 of 1887.

ART. 38. When any of those possessing land in common shall apply to the Circuit Judge for the division and award of the right corresponding to him, the Judge, within twenty-four hours next after the presentation of the petition, shall order that said division be made and that all the co-owners appear in person or through an attorney in fact, within sixty days, and produce the titles of ownership showing in a trustworthy manner the right which each may have in the common property.

224 of law 57 of 1887.

ART. 39. Notice of the order of the Judge shall be served *ex proprio motu*, personally, upon the persons interested and upon the adjoining owners who may be in the place of the proceedings; and by means of edicts posted in the capitals of the Circuits, upon absentees. Edicts shall also be ordered posted in the capitals of the districts where co-owners or adjoining owners may reside, when their residence is known and provided that the Districts be not situated at more than thirty miriameters from the capital of the Circuit in which the estate is situated and where the proceedings are being held.

ART. 40. The edicts shall be posted the same day the division is decreed, in the capital of the Circuit, and shall remain posted for sixty days; in distant Districts they shall be posted for ten days; and in either case, the dates of posting and removal of the edicts shall be recorded. The Judge or Judges commissioned to post the edicts in distant Districts, are obliged to order them posted the same day they are received, and return them *ex proprio motu* upon the very day upon which the period for which they are required to be posted, expires, in order that they may be attached to the record.

ART. 41. When the division of an estate held in common is requested, the boundaries, the number and names of the persons known to be interested, the right corresponding to each of them, the places or localities where situated, the servitudes of waters and rights of way which it enjoys or which are a charge thereon, the various kinds of lands, the watering places and waters running therethrough, shall be clearly stated.

ART. 42. The citation having been made, publicly or personally, all those who believe they have a right to the common estate, shall present, within the eight days next after the removal of the edicts in the place where the proceedings are held, all the documents or titles of former ownership from the person or persons from which the titles of the actual possessors were originally derived, and the documents which clearly establish the right they enjoy. In the petition with which these documents are exhibited, a succinct statement shall be made of the rights leading down from the common origin.

ART. 43. The Judge, in view of the documents referred to in the preceding article, shall declare who are the interested co-owners and shall fix the day (which shall not be less than three nor more than seven after the period allowed for the filing of the papers) and the hour at which all the persons interested who may have presented themselves and who shall have been classified as such shall hold a general meeting. Notice of this order shall be served by means of an edict posted in the office of the Judge until the day of the meeting.

ART. 44. The day and hour fixed having arrived, the Judge shall preside over and call the meeting to order, the minutes of which shall be authorized by the Secretary, and the election by a majority of votes shall be proceeded with of: 1. An administrator; 2. Three arbitrators; 3. Two surveyors; 4. Three appraisers; this shall be done by each co-owner voting, in the first case, for one individual upon one ballot, for two in the third, and for three in the second and fourth cases. The votes shall be scrutinized by two of the co-owners whom the Judge may designate. A minute shall be made by the Secretary of the proceedings as to these appointments, and the meeting shall not adjourn until the minutes shall have been signed by the persons present, including the Judge and the Secretary. These minutes shall be added to the record of the case.

ART. 45. The non-attendance of some of the persons interested supposes that the persons absent defer to the appointments of those present.

ART. 46. The appointments mentioned shall be conferred upon persons residing in the place where the estate may be situated or who go there for the discharge of their respective functions; they shall be communicated by the Judge at his own instance, who shall fix a reasonable period for the entering of an appearance and taking possession, taking into consideration the conditions of going and coming and ten days more. Should they not accept or not appear on the day fixed in the notice of their appointment, they shall be replaced by others who shall be appointed by the Judge on the petition of one or more of the parties.

ART. 47. In the division of the common tenements, each co-owner shall have at the meeting, or acts thereby resolved upon, as many votes as the quota of the person having the smallest interest can be included in the quota corresponding to them.

ART. 48. If all the co-owners should decide at the meeting that the

surveying be done without the necessity of surveyors, the latter shall not be appointed; but if an absolute majority should require it, the appointment is indispensable. There shall be only one surveyor and one appraiser, if all agree thereto. Express mention shall be made upon the minutes of these agreements, and the appointments shall be made in accordance therewith.

ART. 49. When an estate held in common shall not admit of easy division, the sale thereof shall be proceeded with, in accordance with the provisions contained in the Civil Code, and the price shall be divided among the participants *pro rata*, without it being admissible to make the division along imaginary lines.

ART. 50. The office of arbitrator is obligatory, and those appointed thereto cannot be excused from serving for other causes than those which inhibit them from the exercise of municipal offices whose acceptance is compulsory. The Administrator, Surveyor, and Appraisers are not under the obligation of accepting; but if they accept, it is their duty to discharge their respective functions unless they plead and prove just cause, such as a physical impediment, illness of the father, mother, wife or children or grave injury to interests. It shall be the duty of the Judge to hear and pass on the excuse or resignations, and *ex proprio motu* call a new meeting of the co-owners for the election of those who are to replace them.

ART. 51. Those appointed are challenged when after their taking possession the person challenging shall prove that a just cause therefor has arisen, such as enmity or the fact of having become a participant in the land after having been appointed surveyor, arbitrator or appraiser.

ART. 52. In every case in which a general meeting of co-owners is to be held, the administrator of the common tenement shall represent the absentees, and shall have as many votes as correspond to them, according to article 14.

ART. 53. The right of an individual being well known and not subject to doubt, he must be included in the list of co-owners, even though he should not have appeared to request it. He shall be represented by the administrator appointed by the co-owners who have entered an appearance in the proceedings, and his absence shall in no case interrupt the division.

ART. 54. When the co-owners shall abandon their action or not appoint special attorneys in fact to represent them in the proceedings of division, the latter shall be continued with the administrator.

ART. 55. After the employees who must take part in the division in accordance with article 44, shall have been appointed and shall have entered upon the discharge of their duties, the functions of the Circuit Judge shall cease in the matter, and he shall turn the record of the proceedings over to the arbitrators for their use. Nevertheless, should it become necessary to replace any of these employees by reason of their

death or other legitimate cause, the Judge, at the instance of the arbitrators, shall call a general meeting of the co-owners for the appointment of the official who may be absent or unable to continue discharging his duties, and after the appointment shall have been made, he shall communicate it to the arbitrators for the continuation of the proceedings.

ART. 56. The record having been received by the arbitrators, they shall appoint a Secretary to authorize their acts and make them public; and immediately upon his entering on the discharge of his duties, they shall fix a period of not more than thirty nor less than fifteen days, for the persons interested to appear before them and state all that may tend to elucidate their rights. The order fixing such period, all other orders made by the arbitrators, and their decisions, shall be communicated to the persons interested by means of edicts posted in the Circuit Court for a period of eight days, after which they shall be attached to the record with the respective notes of posting and removal.

ART. 57. The following are the duties of the arbitrators:

1. To decide any question referring to the division of the common estate in view of the documents which the persons interested should have presented to the Circuit Judge, in accordance with the provisions of article 42, and which such Judge may have turned over to them.

2. To give the surveyors the instructions necessary for the performance of their duties, expressing therein the boundaries of the common estate and its value; the number of persons interested among whom it is to be divided; the right corresponding to each; the servitudes to which the estate may be subject and those which it may have in its favor, providing how they must conform to equity; the place where his portion is to be adjudicated to each co-owner; the place where the payment of the charges on the estate must be assured; the person or persons who are to take charge of the portions representing any rent charge, and the part to be applied to expenses, if the persons interested do not consign with the administrator the quotas which each is to contribute.

3. To conciliate, and if this should not be possible, to decide the controversies between the co-owners, and employ all the means that, in their judgment, may lead to a compromise or amicable composition, in the event that questions as to boundaries should arise between the latter and the adjoining owners.

4. To decide objections made to appraisements, and all doubts in the minds of the surveyors.

5. To make orders in furtherance of justice (*para mejor proveer*) upon doubtful points in their opinion which can be elucidated.

ART. 58. The incidental questions (*articulaciones*) which one or more of the co-owners may raise during the proceedings shall be communicated to the others, by means of an edict, and, if they should contradict them and they should involve questions of fact, proof thereon shall be admitted for eight days, and they shall be decided without further proceedings.

ART. 59. The arbitrators shall decide impartially and in accordance with the principles of equity upon all the points submitted to their decision; there is no appeal from their resolutions.

ART. 60. It shall be the duty of the appraisers to make a fair appraisal of the different kinds of land, taking into consideration their greater or less fertility, the more or less abundance of waters and materials, the greater or less proximity to the towns and roads, climate, situation, and all the advantages or disadvantages which increase or reduce its value.

ART. 61. Doubts which the surveyors may entertain as to the limits of separation of various kinds of land, must be decided by the appraisers, who shall rubricate upon the plan the ends of lines whose position may have been indicated for the division of two or more portions of land of different values.

ART. 62. It shall be the duty of the administrator to collect in money the quotas which the persons interested may have to contribute to the expenses of division, either for the opening of paths and roads, or for the payment of the surveyors and the other expenses which may be necessary. The expenses shall be distributed in proportion to the rights and shall be collected in installments, as they may become necessary. The administrator in person or through agents, shall take part in the opening of paths, in the manner indicated by the surveyors.

ART. 63. When any co-owner should not wish or should fail to contribute the proportionate part corresponding to him in money, any other co-owner may defray the expense, who shall be indemnified with an equivalent value in land taken from that which is to be adjudicated to the person who did not wish to pay his respective quota; and if no one should desire to contribute, a portion of land of sufficient value to cover all the expenses, shall be segregated and sold.

ART. 64. It shall be the duty of the surveyors to make the division beginning by preparing a topographical plan of the land whose division has been requested, subjecting themselves in everything to the instructions of the persons interested, to the decisions of the arbitrators and to the provisions of the following articles.

ART. 65. The total value of the land must be distributed in proportion to the rights of each; and thereafter there shall be awarded to each party a portion of land of the value which may have fallen to him.

ART. 66. If the land should be of uniform value, the area shall be distributed in parts proportionate to the right of each; if the appraisals be different, the division shall be made *ad valorem*, and the amount falling to each shareholder shall be adjudicated according to appraisalment.

ART. 67. In one lot of land of a value uniform to equal actions or rights there correspond areas equivalent in price and extent, and *vice versa*.

ART. 68. In the distribution, no one shall have the right to be awarded a specific part of land in preference to another; but such section as may

be awarded by the arbitrators must be accepted; unless there should be thereon a house or any other establishment, or it should be under cultivation, in which case the adjudication shall be made there without subdividing the part of each, if this be possible.

ART. 69. But in no case can a person interested use and enjoy the establishments (*fundaciones*), sites and places which another person interested in the common thing may have made and worked or be in occupation of, protected by fences, ditches, paths, or other marks, which may have been respected and which serve to acquire possession, unless it should appear when the adjudications are made, that more than is due him was occupied, with a right to dispose of the improvements thereon; but the person to whom the portion of land having such improvements may be adjudicated, shall be under the obligation of paying for such improvements, which shall be appraised by two experts, one to be appointed by the owner of the land and the other by the owner of the improvements, the procedure prescribed in Chapter VI, Title II, Book II of the Judicial Code being observed.

ART. 70. If the co-owners request their share in a single parcel, and the arbitrators should thus determine, this shall be done if another person interested having an equal right to the adjudication in that point do not object thereto. In such case the portion of land requested by both, must be awarded to them pro rata.

ART. 71. The portions must be as regular as possible, in the form of regular polygons or similar thereto, an endeavor being made to have the dividing lines straight. But if the cultivation of a shareholder should be of very irregular form, they may be encroached upon in part, reserving his right to demand of the latter payment for the improvement he may receive at a just appraisal by the arbitrators, provided that said part encroached upon falls to his right.

ART. 72. The division shall be made in such manner that the parts into which the common estate is divided, form such a group that the boundaries touch and there is no interruption to the continuity between the parts and their adjoining ones.

ART. 73. In order to avoid rights of way between the portions adjudicated, each owner must leave free five meters on each side of the dividing lines, so that the roads may run by perimeters, and thus permit of preserving the servitudes established on the lot of land in general, unless the parties interested shall arrange their rights in a different manner.

ART. 74. Waters are a servitude constituted in all and each of the tenements adjudicated in the part in which the beds are and must be intercepted by the same.

ART. 75. Servitudes of waters and rights of way may be established upon the parts adjudicated to some, if this should be absolutely necessary in order that the neighboring and adjacent tenements may enjoy

this benefit, an endeavor being made that, without the necessity of a servitude, the parties be benefited by the waters, in so far as possible.

ART. 76. Whenever in accordance with the preceding article it should become necessary to establish a servitude of waters or rights of way, the owner of the servient tenement must be indemnified in accordance with a just appraisal of experts appointed by the persons interested. If the servitude be of waters, the owner of the dominant tenement is under the obligation of keeping the bed clear, under which condition the servitude is executed or granted.

ART. 77. In every case it is indispensable that between the portions awarded to the co-owners there be only natural limits or straight lines of a determinate position and length.

ART. 78. The division having been made upon the plan, the surveyors shall fix upon the ground the points which may be homologous, and the persons interested or the administrator shall place the permanent boundary marks upon the respective points which surround the point adjudicated. This demarcation is indispensable, and without it, judicial possession cannot be conferred.

ART. 79. The portions of land awarded for the charges upon the lands, shall be marked off by the administrator or the person interested to whom they may be awarded.

ART. 80. Upon the conclusion of the division, the surveyors shall prepare a statement of the work done in the measuring, division, adjudication, description of the dividing lines, naming and numbering the marks and important points. This report, together with the plan, upon which the scale of construction, the area of the land and its value, shall be indicated, shall be submitted to the approval of the arbitrators, and, after having been attached to the record of the case, shall be transmitted to the Circuit Judge for filing.

ART. 81. When in the judgment of the arbitrators, there are portions of land whose division may be very difficult, such lands shall remain in community. In this case, as well as in all cases in which for any reason the community of a common channel for the drainage of a lake, river or swamp belonging to the community, or extending upon its lands, should subsist, if one or more should desire to open and deepen the channels, and open a new one to drain or preserve the lands, all must contribute to the cost thereof in proportion to the benefits derived, according to the opinion of experts, and should they not do so, those who execute the work shall be entitled to indemnity of one-half the increased value which the lands of the person failing to contribute, may have acquired by virtue of such work: for the purpose of ascertaining this increased value the lands shall be appraised by experts, before the work is undertaken, and again after completion thereof.

ART. 82. Whenever any co-owner should request the division and the rest should desire the community to continue, the division shall be

confined to a segregation from the common land of the part corresponding to the petitioner. In such case all the co-owners are obliged to contribute to the expense of the general survey of the land and the preparation of the plan, and the co-owner or co-owners requesting the division shall be obliged to defray the cost of the separation of their respective portions from the common estate.

ART. 83. After the appointment of the officials who are to take part in the division proceedings, the Judge shall assign the arbitrators and the administrator an equitable remuneration for their work, taking into consideration the nature of the business and the difficulties offered. The appraisers shall be paid in accordance with the second paragraph of article 196 of the Judicial Code; but if the fees assigned them thereby are not commensurate with the work, the Judge may increase them.

ART. 84. For the purpose of decreeing the division of the thing held in common, sales, exchanges, alienations of any kind, concessions of rights and licenses, the establishment of new workings and groundworks, the extension of the old ones and all that which might in any manner alter the state of the thing held in common during the proceedings, are prohibited.

ART. 85. From the prohibition established in the preceding article is excepted the alienation of all the rights, groundworks and workings which each co-owner may have in the common estate at the time the division is decreed. The alienation shall be placed on record in the court taking cognizance of the proceedings, with the proper instrument duly recorded, which shall be added to the record, and thereafter the purchaser shall be considered a party in the place of the vendor. This alienation cannot be made to various persons, but to one only.

ART. 86. No co-owner can trespass upon the possessions or part of the land which another may have enclosed by fences, nor deprive him of the enjoyment of any right of which he may be in possession; and should he do so, the co-owner prejudiced may institute the necessary summary proceedings to retain possession to which he may be entitled.

ART. 87. When the statement referred to in article 42 should not succinctly determine the order of succession of the rights of a co-owner up to the common origin, the Judge shall always declare him interested when the documents presented shall establish the right which he enjoys, said circumstance being made of record; and in such case the arbitrators, after securing such data as they may consider necessary, shall determine, in accordance with the principles of equity and impartially (*verdad sabida y buena fe guardada*), what quota of the land corresponds to the right claimed.

ART. 88. The co-owners who, after the division of an estate shall have been decreed, should attempt to prevent it by acts of violence or in any other manner, shall be criminally prosecuted for the crime of damage to another's property, without prejudice to their being prosecuted also

for the other common offenses which they may commit with such end in view; and it is the duty of the authorities to proceed *ex proprio motu* to institute the proper summary proceedings when they shall have knowledge of the act, or when it shall be denounced to them by a private individual.

ART. 89. In instruments executed in the sale of rights in a common estate, the vendor is obliged to state clearly the value of the original right which he acquired under any title, specifying the title; what rights he has sold and what he reserves.

Instruments executed without stating the circumstances mentioned in this article, are null.

ART. 90. The salaries of the employees and other expenses which the execution of this law may cause, shall be considered as included in the respective budget.

LAW 32 OF 1886*

(October 26),

On Literary and Artistic Property.

THE NATIONAL LEGISLATIVE COUNCIL:

Decrees:

CHAPTER I.

Definitions and General Provisions.

ART. 1. Literary or artistic property, or the right of authorship, consists in the power which the laws grant authors for a determinate period and after the execution of certain formalities, to exploit their works.

ART. 2. By author is understood, for legal purposes, he who has produced an original work, and also he who edits, compiles, quotes or abridges other works, provided that the editing, compilation, quotation or abridgment, be made within the limits permitted by international laws and conventions.

ART. 3. The benefits of this law extend to all Colombians who may publish their works abroad, even though it be in a nation with which there is no convention as to literary property.

ART. 4. He who publishes for the first time an unpublished work having no owner, availing himself of a manuscript of which he is the owner, is assimilated to an author.

ART. 5. The State, Corporations and juristic persons, also enjoy the right of literary property, during the time they are in legal existence.

ART. 6. By a literary or artistic work is understood, for legal purposes, any production which is the result of a personal work or effort of intelligence, of imagination or of art.

Not only a completely original production, but also those productions whose elements, although taken from other authors, shall have been selected with judgment, given a new form, and appropriated with intelligence to a more or less general use, shall be considered as one's own work.

ART. 7. Philosophical or scientific ideas, thoughts or methods, and other human knowledge, aside from the special form which the author or artist may have given thereto, do not constitute private property, and may be freely presented under new forms.

ART. 8. Scientific inventions or discoveries, the application of which is practical and exploitable, do not constitute property; and they are

*This law is herein embodied as it has been incorporated in the Civil Code by article 83 of law 153 of 1887.

only a matter of privilege, in accordance with article 120, subdivision 20 of the Constitution.

ART. 9. Every work of the mind, after having been consummated by printing, engraving, or any other similar means, and after the legal formalities have been observed, constitutes property which is governed by the common law without further limitations than those imposed by the law.

ART. 10. Literary and artistic property pertains to authors during their lifetime, and after their death those who may have acquired the same legally, shall enjoy it for a period of eighty years.

ART. 11. Literary property is subject to the limitations imposed upon the press by article 42 of the Constitution.

The right of literary property is also limited by the censorship which in accordance with the laws, the Government may establish with regard to dramatic productions for reasons of public morality and national honor.

ART. 12. No one can reproduce any work either in whole or in part without the permission of the author. This prohibition comprises the literary or artistic works not published nor registered which may have been stenographed, noted or copied during the reading, execution, or public or private performance thereof.

ART. 13. Any person may, without restriction, reprint the works belonging to the public ownership; but if they should be of a known author his name cannot be suppressed, nor can interpolations be made therein without the proper distinction between the original text and the editorial modifications or additions.

CHAPTER 2.

Of the transmission of literary property. Legal and International Effects.

ART. 14. Literary property is transmissible like any movable property. The author may assign it under a gratuitous or onerous title, and the cession may be total or partial. If there should be no express stipulation limiting the right of the assignee, the latter shall have that pertaining to the author or to his heirs.

The author may, likewise, by an express declaration, abandon his work to the public ownership.

ART. 15. In cases in which literary property should be transmitted by acts *inter vivos*, it shall pertain to the assignees during the lifetime of the author and for eighty years more, if he does not leave forced heirs. But if there should be forced heirs, the right of the assignees shall terminate twenty-five years after the death of the author; and then the property shall pass to the forced heirs for a period of fifty-five years.

ART. 16. The assignee does not acquire the right to introduce in the work passing to his ownership, any alterations or modifications, without

the permission of the author or of his family, if the former should have died.

ART. 17. The author assuming, in consideration of a stipulated compensation, the preparation of a literary or artistic work, does not acquire thereover any right of ownership.

In such cases the ownership is vested in the person ordering the work and he who executes it has only the right to recover the compensation agreed upon.

ART. 18. (*Transitory*). The greater duration of the literary property shall benefit the authors whose privilege shall not have lapsed the day of the promulgation of this law, and also the assignees in the same case; but it does not exempt them from the obligation to record the same.

ART. 19. (*Transitory*). Authors whose privilege shall have lapsed before the promulgation of this law, may likewise recover the ownership of their works, and enjoy the new legal benefits, upon making the proper record and deposit, as established in Chapter III, or only the record if the editions should be exhausted.

Publishers who may have re-printed said works while they were public property, cannot be prevented from continuing to sell the copies already printed; but they are obliged to number and mark them under the inspection of the author, in order to prevent the fraud of a new edition.

ART. 20. (*Transitory*). The surviving wife and children of a Colombian author may likewise recover the ownership of the works of the latter, under the conditions established in the preceding article.

ART. 21. A work not inscribed upon the Register within the legal term, shall become public property for ten years, from the date upon which the right to record it terminated.

ART. 22. During the year following the ten which may have elapsed since said day, the author, or his successor in right, may recover the ownership of his work upon having it recorded upon the Register; but he cannot prevent the sale of the copies which may have been freely printed during the ten years. But he has the right to take the precaution referred to in article 19 (second paragraph).

If the author should not avail himself of this second opportunity, the work shall definitely become public property.

ART. 23. If the works should be published in successive parts and not at one time, the terms fixed in the preceding articles shall begin from the time the work may have terminated.

ART. 24. An author who shall bequeath his own manuscript or who should be enjoying the ownership of a printed work, may by testament postpone the printing thereof or prohibit its reprinting within the term of eighty years.

ART. 25. Natives of States in which the Spanish language is spoken and whose legislation recognizes in the Colombians the right of

literary property in the terms established in this law, shall enjoy in Colombia the rights granted thereby, without the necessity of a treaty or diplomatic negotiations, by private proceedings before the Judge of competent jurisdiction.

ART. 26. In the international conventions entered into with the Government, a reservation of the rights of translation cannot be stipulated, unless works are in question which are written in a foreign language and printed in a country where the Spanish language is the dominant one, as are works in Latin, Basque or Catalanian, printed in Spain.

CHAPTER III.

Of the Inscription and other Legal Formalities.

ART. 27. A general register of literary property shall be opened in the Department of Public Instruction, and special registers in the departments of the Departmental Governments.

The general register shall be made up of the records which may be made therein by the authors or their attorneys in fact, and of those which must be forwarded every six months by the Department Governors, made in the respective departmental register.

ART. 28. In order to enjoy the benefits of this law, it is necessary that the person interested request and make the respective record, upon the general or departmental register, within the term and under the conditions stated in this chapter.

The certificate of the record to be delivered to the person recording a work, constitutes a legal presumption of ownership as long as the contrary be not established.

ART. 29. The record is governed by the following provisions:

1. The petition for the record shall be made in accordance with the form published by the Department of Public Instruction.

2. If the work should be a printed one, three signed copies thereof shall be deposited in the respective registry: two of which shall be destined to the National Library and the other to the Department of Public Instruction.

If the record be made in the departmental register, the Governor shall transmit two copies to the Department of Public Instruction, one for the Department and the other for the National Library; the third copy shall be destined to the Departmental Library, if there be any, or to another public institution of the capital of the Department.

3. If the work should be a periodical one, it shall be registered and deposited by collections of series not covering periods of more than six months. The record which the owner of a periodical may make, shall at the same time assure his right and that of reproduction pertaining to his collaborators.

4. If the work should have been produced in a public performance and should not be printed, only one manuscript copy thereof shall be deposited.

5. If the work should be artistic, and there should be only one, as a painting, a bust and others of a pictorial or plastic order, the obligation to register and deposit is waived; without the owner by such waiver being excluded from the enjoyment of the benefits of this law.

ART. 30. The term granted for the registration shall be one year from the date of the publication of the work; but the author shall enjoy the benefits of the law from the day the publication was begun, and shall lose them only if he shall fail to comply with the legal formalities within the year granted for the inscription.

ART. 31. No registration fee whatsoever shall be charged for the recording of works.

ART. 32. Every act transmitting literary or artistic property must be embodied in a public document, which shall be recorded in the proper Register; and without this requisite the person acquiring it cannot enforce his rights.

The law, and in its absence, the regulations, will fix a tax upon the transmission of literary property.

CHAPTER IV.

Special Provisions regarding different kinds of Works.

§ 1. *Letters and Private Papers.*

ART. 33. Letters are the property of the persons to whom they may be addressed, but not for the purpose of their publication. This right is vested only in the author of the correspondence, excepting a case in which a letter must be produced in court as evidence, and that its publication is authorized by a court of competent jurisdiction.

ART. 34. Letters of persons who have died, cannot be published during the eighty years after their death, without the permission of the family council.

The law, or the regulations, will determine what is understood by the family council.

§ 2. *Oral Lessons and Speeches.*

ART. 35. A salaried professor preserves the right to publish his lectures, unless there be an express stipulation to the contrary.

ART. 36. Parliamentary speeches, after having been officially published, may be freely reproduced in periodicals or otherwise.

But parliamentary speeches of one author cannot be published in a separate collection without the permission of such author.

§ 3. *Transcriptions and Anthologies.*

ART. 37. An author may be cited by the transcription of the necessary passages, provided that such passages should not be so numerous and in such sequence that they may be considered by experts as a fictitious and substantial reproduction, which redounds to the prejudice of the work from which they are taken.

ART. 38. Selected sections in prose or verse may likewise be reproduced from collections destined to schools or which have a specific literary purpose, provided that by reason of the abundance of works of one author such reproduction does not prejudice him, and provided it be not done against the express will of the respective writer or poet.

These anthologies or florilegia constitute property in favor of the collector only as to the new order adopted in the distribution, and the preambles, notes or comments accompanying them.

§ 4. *Translations and Abridgments.*

ART. 39. A work cannot be translated or abridged without the permission of the author.

But the works of an author who is not a Colombian, and printed in countries having a foreign language, may be freely translated in whole or in part, with the sole obligation of not concealing the name of the author.

ART. 40. Translators or abridgers are the owners of their own translations or abridgments, but if they should not have acquired from the author the exclusive right of presenting their works in such new forms, they cannot object to the publication of different translations or abridgments thereof, each of which constitutes the property of him who makes it.

ART. 41. In the event of a controversy before the courts as to whether a new translation or abridgment is a simulated reproduction of a previous one, with slight variations, and without the intellectual effort from which the right emanates, before a decision is rendered, an expert opinion shall be secured.

§ 5. *Unedited, Anonymous and Posthumous Works.*

ART. 42. The compilations of works or information which are public property, shall constitute private property, if any new work in the system and coördination be noticed.

The compiler cannot object to the publication by others of the same information under a new system and in a different form.

ART. 43. He who shall take a work which is public property and reduce it in size or extract its substance therefrom in any manner, is the owner of his own work, and may prohibit its reproduction; but not that others make different condensations of the same work.

ART. 44. The collection of popular couplets and stories constitutes property when it is the result of direct investigations made by the collector or his agents and is the subject of a special literary plan.

ART. 45. Manuscripts preserved in the public archives and libraries, cannot be copied nor edited without the proper permission.

The Government shall grant such permission to the first one requesting it, setting a term not to exceed three years for the publication thereof, and granting him the benefits thereof as exclusive editor for a period of ten to forty years, as the case may be, as an encouragement for the work of publication of ancient or curious manuscripts.

If the time for the publication having arrived, the assignee should not have made it, he shall lose the right acquired absolutely.

ART. 46. In anonymous or pseudonymous works, the publisher who, as assignee, exercises all the rights of ownership, shall be considered the owner, until the author shall prove his authorship. The author having been discovered, he shall continue to be subrogated to the publisher in the possession of the rights pertaining to him.

ART. 47. Posthumous works shall be considered not only those published after the death of the author, but also those which have acquired publicity orally during the life of the author, and have not been printed until after his death; and also the printed works which the author at the time of his death shall have left rearranged or increased or corrected in such manner that they can be considered new works.

ART. 48. The owners by succession or another title, of a posthumous work, have the right of authorship thereover; and they may print it separately or together with other works which may not have left the private ownership.

But they cannot publish them, under the penalty of losing any exclusive right, together with other works which may already have become public property.

§ 6. *Works in Collaboration, Newspapers.*

ART. 49. The author or publisher of a compilation is the owner thereof, and has with regard to his collaborators only the obligations which may have been imposed upon him by the contract of the hire of the industry, in which contract various conditions may be imposed.

A collaborator who shall not have reserved to himself, by an express stipulation, any right of co-ownership, can claim only the price agreed upon, and the publisher of the compilation to which he gives his name, shall be considered as the author in the eyes of the law.

ART. 50. Works in collaboration constitute an indivisible work while kept in common as prepared; and the duration of the ownership in their second period shall be computed from the death of the author who survives the others.

But each of the collaborators may freely dispose of the part which he contributed when this shall have been stipulated when the common work was begun.

ART. 51. The publishers or managers of newspapers, in the absence of an agreement to the contrary, have the right to publish on one occasion only the articles of the writers paid by them, which writers preserve the ownership of their works and the right to publish them in such form as they may see fit.

ART. 52. Productions published in newspapers may be reprinted in other newspapers, it being obligatory that the paper from which they were transcribed be cited.

A case is excepted in which the newspaper expressly states that the author or publisher reserves the right of reproduction as to specific articles.

ART. 53. If the title of a work be not a generic one, but individual and characteristic, as is especially the case with newspapers and reviews, it cannot be adopted for another similar work without the proper permission of the owner thereof, in order that the public may not be led into error, or the second be considered as a reprint of the first, which constitutes a case of fraud.

§ 7. *Official Documents, Suits and Causes.*

ART. 54. The reproduction of the laws, regulations, and other public acts is permitted to all, under the obligation of strictly conforming to the official edition.

Private individuals may also publish the Codes and legislative collections; with notes and commentaries, each author being the owner of his own commentary.

ART. 55. The parties are the owners of the pleadings which they may have presented in their own name in any suit or cause, provided that they shall have paid the fees therefor; but they cannot publish them without the permission of the adjudging tribunal, which shall grant such permission provided that there is no objection to the publication.

The attorney who may have authorized the pleadings may form collections thereof, with the permission of the respective party and of the Tribunal.*

ART. 56. In order to publish copies or transcripts of closed causes or suits, the permission of the adjudging tribunal is necessary, which, taking into consideration the honor and tranquillity of the families interested in the matter, shall grant or refuse such permission in its discretion, without further remedy.

If two or more persons should request the same permission, the Tribunal, according to the conditions, may grant it to some and refuse it to

* Repealed by art. 338 of law 57 of 1887.

others, imposing the restrictions which it may consider advisable. There is no remedy against its decisions.*

§ 8. *Dramatic and Musical Works.*

ART. 57. No dramatic or musical composition can be produced in any public theatre or place, either in whole or in part, without the previous permission of the owner.

But if the work should not be a national one, but original of another country in which the Spanish language is spoken and with which there exists reciprocity in matters of literary property, such prohibition applies only to works whose authors shall have expressly reserved this right.

ART. 58. The owners of dramatic or musical works may freely fix the charges of representation in granting their permission, and if they should fail to do so, they may claim only such as are established by the Regulations.

ART. 59. Popular songs are public property and the publisher thereof has no exclusive right to their publication.

ART. 60. Musical compositions, as well as arrangements, variations, etc., on a theme or air which is public property, constitute the property of the author or arranger thereof.

Arrangements of this character if based upon an original composition, are subordinated to the previous authority of the original author.

Transpositions are assimilated to translations in literary matters; and an expert opinion shall be given before a decision is rendered as to whether they constitute an illicit reproduction.

§ 9. *Pictorial and Plastic Works.*

ART. 61. Any person has the right to prevent that his likeness or bust be exposed or sold without his authority; but he cannot prevent its possession by a *bona fide* merchant without an equitable indemnity.

The reproduction or sale of a likeness or bust of a deceased person cannot take place without the permission of his family.

An absolute and perpetual permission to publish and sell a likeness can be granted only by a formal contract.

ART. 62. The question as to whether the painter or sculptor preserves the right to reproduce exclusively his work by engraving or other similar means, after having sold it, is generally decided negatively, and in special cases in accordance with the stipulations of the contract of sale.

* Repealed by art. 338 of law 57 of 1887.

CHAPTER V.

Penalties.

ART. 63. He who shall record or sell as his own, or cause to be published as if it were public property, a work which is private property, and he who shall in any other manner encroach upon the rights recognized and guaranteed by this law, commits fraud or falsification in matters of literary property.

ART. 64. A falsification committed in a foreign country, also constitutes a crime, if it is sought to profit from the results thereof in Colombia; and not only is he who imports the works liable but also he who forwards them from abroad, and he who requests their introduction.

ART. 65. He who reproduces in Colombia works of private property printed in Spanish, in countries with which there is reciprocity in matters of literary property, also commits fraud.

ART. 66. A printer who shall reserve to himself a greater number of copies than the number due him under the contract with the author or publisher, shall also be prosecuted as guilty of fraud.

ART. 67. The reproduction of the work of another abroad, if it should subsequently be introduced in Colombia, as well as the falsification of the title page, changes in the text and other changes in the truth maliciously made to the prejudice of the author, are aggravating circumstances.

ART. 68. Persons guilty of fraud shall be punished by the imposition of a fine ranging from a sum equal to the amount of the damage caused, to one three times said amount, and shall lose all the copies counterfeited, which shall be applied to the defrauded owner.

ART. 69. If the author of the fraud should not appear, the publisher, the printer and the seller shall be successively liable, unless proof be presented to the contrary that they have acted without malice, or that they were imposed upon or deceived.

ART. 70. He who shall introduce from abroad copies of an illegal edition, shall be obliged in every case to deliver to the defrauded owner the copies which he may have in his possession and to pay him the value of the copies he may have sold.

If it be established that the author gave due notice to the booksellers of the existence of a fraudulent edition, and they subsequently introduced copies thereof, in addition to the penalty stated, they shall incur a fine of one hundred to five hundred pesos; and in the event of a second offense, a penalty of correctional imprisonment for a term not less than two or not more than six months, shall be added to the penalties stated.

ART. 71. Doctrines, opinions, and systems not constituting literary property, in accordance with article 7, he who shall reproduce the ideas under a different method, arrangement and execution, shall not be guilty of fraud.

But if he should give out as his own a method or system invented by another, the author prejudiced shall have a right of civil action and may obtain an order from the court, directing that his name be cited and the honor of the invention be restored to him.

ART. 72. The cognizance of all questions to which fraud in literary property may give rise, and of the civil actions pertaining to the private individuals under the rights granted them by this law, shall be vested in the ordinary courts.

The owner of the work or he who may have acquired his right of action or who may legally represent him, has the right to bring action.

ART. 73. In the case of a controversy as to whether there has been a legal adaptation of ideas in a work, or an illegal reproduction of the material of another, the Judge or Tribunal taking cognizance of the matter, may direct that an examination or comparison be made by experts, and in the absence of previous decisions establishing a precedent, the principles sanctioned by the French or Spanish jurisprudence in the matter of literary and artistic property, shall be specially observed.

CHAPTER VI.

Final Provisions.

ART. 74. The Supreme Government shall establish the regulations for the application of this law.

ART. 75. Laws 1 and 2 of Treaty 3 of the Granadian Recopilation, and all legislative provisions in contravention of this law, are hereby repealed.

Given in Bogotá, October twenty-first, eighteen hundred and eighty-six.

The President,	JUAN DE D. ULLOA.
The Vice-President,	JOSÉ MARÍA RUBIO FRADE.
The Secretary,	JULIO A. CORREDOR.
The Secretary,	ROBERTO N. NARVÁEZ.

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